



REPORT
OF THE
Provident Fund Scheme Committee
(SHOPS AND ESTABLISHMENTS)

1960



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1960

REPORT OF THE PROVIDENT FUND SCHEME COMMITTEE
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नमो भगवते वासुदेवाय

BOMBAY PROVINCIAL BANKING ENQUIRY COMMITTEE.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

BOMBAY PROVINCIAL BANKING ENQUIRY COMMITTEE.

Tuesday, January 14th, 1930.

KARACHI.

PRESENT :

MR. J. A. MADANI, C.I.E., I.C.S. (*Chairman*).

MR. L. D. L. FOCKLEY.

MR. J. N. R. MEHTA.

Professor V. G. KALE.

MR. V. L. MEHTA.

MR. B. S. KAMAT.

MR. R. P. MASANI (*Secretary*).

SETH HAJI ABDELILA HAROO (*Member, Indian Central Banking Enquiry Committee*).

KARACHI INDIAN MERCHANTS ASSOCIATION AND BUYERS AND SHIPPERS CHAMBER, KARACHI.

Replies to the Questionnaire.

AGRICULTURE. FINANCE. *a) The Present Position.* The universally impecunious agriculturist, whether a cultivator or a small *khatedar*, has on most occasions to resort to borrowing. It may be expense for cultivation or improvements or the necessity arisen by failure of crops. On all these occasions the financing agency is the same. More than 99 per cent. borrow, and the *soucar* and the *zaminidar* between them accommodate about 85 per cent. of the loans. In this regard an enquiry into the borrowings of the cultivators of cotton in Sind was held by a committee deputed for the purpose by the Indian Central Cotton Committee, Bombay. This report "An Investigation into the finance and marketing of cultivators' cotton in Sind" amongst other things states as under:—

"(1) The cultivators are mostly in heavy and chronic state of indebtedness.

(2) Their principal source of borrowing is the *soucar* who charges them rates of interest between 18 $\frac{3}{4}$ per cent. and 75 per cent. and in addition receives small services or small benefits in kind by way of grain, grass, or seed, cotton.

(3) The cultivators are in most cases bound down, as a condition of their getting loans, to sell *Lupus* through or to the *soucar* or money-lender; and so they lose all control over the rates of sales."

The report further states that very often the *soucar* removes the crop and sells it himself to recover the loan, that early and unfavourable sales are forced upon the cultivator and that the cultivator often finds it difficult to obtain loans with the result that heavy interest usually varying from 18 $\frac{3}{4}$ per cent. to 37 $\frac{1}{2}$ per cent. has to be paid by the cultivator. The

II

Terms of Reference.

2. The terms of reference of the Committee were as follows :—

(1) to examine the practicability of having a provident fund scheme for the employees employed in 'Shops' and 'Establishments' as defined in the Bombay Shops and Establishments Act, 1948, in cities with a population of one lakh or more persons ;

(2) to suggest a provident fund scheme broadly on the lines of the Employees' Provident Fund Scheme, 1952 ; and

(3) to suggest the classes of 'Shops' and 'Establishments' to which the scheme should be applied, in the first instance and the manner of its extension to other classes and areas.

3. Subsequently, Government, by its letter, Labour and Social Welfare Department No. EPF. 2359/129806-I, dated the 30th September 1959 (Appendix 'B'), informed the Chairman of the Committee that the Government desired that since the question of extending the Employees' Provident Fund Act, 1952 and the Scheme framed thereunder to hotels and restaurants was being considered by the Government of India separately, these establishments might be excluded by the Committee from the purview of its enquiry.

III

Scope of Enquiry.

4. The enquiry was thus restricted to those shops and establishments to which the Shops and Establishments Act applied excepting hotels and restaurants and banks which had branches in other States, the latter being governed by the Bank Award.

5. Out of 148 cities and towns in the Bombay State, the Government Resolution restricted the Committee's enquiry to cities with a population of one lakh or more. As per the census of 1951 the following 12 cities had such a population :—

- | | |
|----------------|---------------|
| 1. Ahmedabad. | 7. Kolhapur. |
| 2. Ahmednagar. | 8. Nagpur. |
| 3. Baroda. | 9. Poona. |
| 4. Bhavnagar. | 10. Rajkot. |
| 5. Bombay. | 11. Sholapur. |
| 6. Jamnagar. | 12. Surat. |

IV

Course of Enquiry.

6. The Committee was directed to submit its report to the State Government within six months from the date of its appointment. The persons who were members of the Minimum Wages Committee, in the Employment of Shop or Commercial Establishment were, also, the members of the Provident Fund Scheme Committee, Shops and Establishments, the only additional member being the Regional Provident Fund Commissioner or his nominee. The first meeting of the Committee was held on 2nd January 1959. The Committee felt that the two enquiries could not be taken together as the work of the Minimum Wages Committee, which was taxing enough, had already been midway. Taking into consideration the approximate time likely to be taken for the completion of the Minimum Wages Committee's work, extension for six months for the submission of this Committee's report was requested. Accordingly the Government extended it to 30th November 1959 under its Resolution, Labour and Social Welfare Department, No. EPF. 2357-I, dated the 22nd May 1959.

Questionnaire.

7. The Minimum Wages Committee submitted its report to Government on 31st March 1959. In the meanwhile, this Committee had issued a detailed questionnaire in English, Marathi and Gujarathi (Appendix "C") on 17th January 1959, to organisations of employers and employees in the employment, "shop or establishment" requesting them to send their views by the 21st February 1959. A note on the Central Government Provident Fund Scheme was forwarded to those who had replied to the questionnaire requesting their comments on it (Appendix "D"). Further, an enquiry was made through a Circular to organisations of employers and employees in the employment "shop or establishment" requesting them to send lists of establishments with their full postal addresses from among their members, which had introduced a provident fund scheme or any other retirement benefit scheme on a voluntary basis. The questionnaire and various queries which were addressed to 2116 organisations and individuals brought in only 110 replies. Quite a number of them were vague and therefore afforded hardly any guidance.

8. In view of the poor response to the questionnaire and queries the Committee felt that it would have to conduct an appropriate enquiry on a sample basis through the Office of the Commissioner of Labour, Bombay. The Committee also requested Government to enlarge the terms of reference by permitting it to examine not only the practicability of introducing a provident fund scheme but also any other scheme of retirement benefit. All these new developments necessitated further extension of time and the Committee by its resolution, dated 21st November 1959 requested Government for a further extension of one year.

New Circumstances.

9. However, the decision to break up the Bilingual State did not allow the Committee to wait till this enquiry could be initiated, its results known and sanction to the widening of the terms of reference obtained. We, therefore, had to be content with whatever information was available and make our recommendations with the inevitable limitations from which our enquiry suffered.

Data Studied.

10. In connection with its work the Committee studied the relevant provisions in the Bombay Shops and Establishments Act, 1948, and the Rules made thereunder, the Employees' Provident Fund Act, 1952, of the Government of India and the Scheme thereunder, along with the reports of the working of the said Scheme for 1955-56, 1956-57 and 1957-58, and the report of the Study Group on Social Security, 1958. In addition to this the Committee looked into some Provident Fund Schemes introduced voluntarily by certain establishments as also the draft Provident Fund Scheme prepared by Shri R. S. Thonsekar one of its members (Appendix "E"). Since most of the shops and establishments covered by the enquiry had less than 20 employees, the Committee tried to collect as much information as was possible regarding the structure of Provident Fund Schemes for small establishments, statutorily introduced in other countries, through the Social Security Division, International Labour Office, Geneva. The Committee succeeded in having information about the broad features of Provident Fund Schemes in Ceylon, Australia, Japan, Federation of Malaya and Iraq (Appendix "F").

VI

Desirability of Retirement Benefit.

11. The need for some provision which would take care of old age when the earning capacity is impaired is obvious. The individual left to himself is hardly likely to lay by anything for the rainy day when present needs are pressing. With the break-up of the joint family the respect for and care of the old by the young are no longer universally prevalent. In absence of a universal Old Age Pension Scheme, the best way to provide for this would be a contributory Provident Fund Scheme, to which both the employers and the employees would have compulsorily to contribute, and which would normally be available in its entirety to persons on their retirement, when they could no longer continue to serve. Obviously however such a fund could, also be of use if for one reason or other the employee was no longer in a position of gainful employment. It would have the incidental advantage of being useful to family members on untimely death of the earner. At present for the category of employees covered by our terms of reference there is no general compulsory Provident Fund Scheme.

12. Our enquiries with the Commissioners of Income-Tax showed that in the Bombay State area excluding the Nagpur Income-Tax Zone for which information could not be had, already there were as many as 1176 Provident Fund Schemes recognised under Chapter IXA of the Indian Income-Tax Act, 1922. Among the Associations of Employers that had sent replies to the Committee's Questionnaire, there were a few who positively favoured the introduction of a scheme while some others accepted the desirability of having a scheme of retirement benefit, though they would not favour its immediate introduction because of the smallness of the size of most of the establishments, the financial burden involved and the complicated maintenance of contribution cards and accounts, the responsibility pertaining to the timely submission of returns by failure of which they would invite penalties. The Unions of employees of course pressed for the immediate introduction of the Scheme.

VII

Pros and Cons.

13. The Committee was greatly impressed with the need of having compulsory Provident Fund Scheme on as wide a basis as possible. Naturally, however, before the Committee could make any recommendation in this regard it had to be satisfied that the employers had the capacity to bear this additional burden and that a scheme was administratively simple.

14. In view of the earlier experience that most of the members of the Committee had in their enquiries pertaining to shops and commercial establishments, it was obvious to the Committee that the Provident Fund Scheme could not be made to apply to all shops and establishments falling within the terms of reference, as their financial ability to pay even a minimum wage was limited and as in many cases the firms coming within the category had a high incidence of mortality. It was apparent that the retailers who accounted for a high percentage of the units coming in the category had small turnover and small profits and employed a very small number of employees. It was not feasible to apply the benefits of the scheme, however otherwise desirable, to their employees.

15. The industrial establishments covered in this category worked in many cases in close competition with the factories covered by the Factories Act. Many of them were greatly handicapped because of their small size and it was the declared policy of the Government of India to encourage small scale units. If, therefore, for one reason or the other the Government of India did not think it desirable to extend the benefits of the Employees' Provident Fund Act to factories employing less than 50 persons it would obviously be unfair to levy the burden of the Provident fund contributions on the employers of industrial establishments who were not covered by the Factories Act and were employing less than 20 persons.

Introduction in Bigger Shops.

16. It was clear to the Committee that there was no reason for exempting shops and establishments which were employing 50 persons or more. Presumably the Shops and Commercial Establishments employing such a large number of employees would have ability to contribute their quota to the

Provident Fund Scheme as industrial establishments or factories in a similar predicament. There might, however, be a few shops and establishments which, because of the nature of their trade, might have ability to pay, even though the number of employees was small. The Committee, therefore, devoted some time and attention to see if such shops and establishments could be located. At one stage, they had thought of awaiting the results of an enquiry into all shops and establishments registered for the purposes of the sales tax. Unfortunately, due to limitation on time it could not be done.

17. We have therefore decided to take the safe line and recommend that the Provident Fund Scheme should be applied only to shops and establishments employing 50 or more persons in all cities with a population of a lakh and more. We understand that the Central Government has been thinking of extending the benefits of their Provident Fund Scheme to factories employing 20 and more persons. As and when the State Government may like to follow such a course in the case of shops and establishments, the Committee urges that before taking a decision, full enquiry on the lines contemplated by it should be undertaken by Government.

VIII

Recommendations.

18. (1) The Committee is of the view that a Provident Fund Scheme for the employees in all shops and establishments employing 50 or more persons is practicable.

(2) The scheme should be applied to all cities having a population of a lakh or more.

(3) Before making the Scheme applicable to smaller shops and establishments a proper enquiry into their capacity to bear the burden and to maintain registers, forms and other records should be made. The collection of information should be undertaken departmentally by Government, in addition to a general invitation and circulation of a questionnaire to those concerned or interested in the enquiry.

(4) The Provident Fund Scheme should provide for the following important matters :—

(i) The contribution to the fund by employers and employees should be equal.

(ii) The rate of contribution should be on par with the one prescribed for industrial establishments employing 50 or more employees under the Employees' Provident Fund Act, 1952 of the Central Government.

(iii) Every employee irrespective of the amount of the consolidated wages-pay-drawn by him, on completion of one year's service shall be admitted to the Provident Fund Scheme.

(iv) Any amount with interest thereon standing to the credit of the members in the account of the Fund may be withdrawn, not more than once in every six months to make a payment towards the policy of Life Insurance, subject to such rules as the Government may make in that behalf.

(v) Whenever an employee is entitled to obtain the benefit of the Provident Fund he shall get his own contribution plus interest at such rate as laid down by the Labour Commissioner, who, we are recommending, should administer the Fund for the State Government. He shall however be entitled to employers' contribution only if he has put in a service of five years.

(vi) As regards the assignment of the Provident Fund and limitation of right to it by family members, they should be the same as provided in the Employees' Provident Fund Scheme of Government of India.

(vii) There are Provident Funds which are recognised under Chapter IX-A of the Indian Income-Tax Act, 1922. If in the opinion of the Government, they conform to the provisions of the Statutory Provident Fund Scheme for shops and establishments they may be specifically permitted to continue. All other existing Provident Funds whether recognised or otherwise shall be transferred to the Shops and Establishments Statutory Provident Fund.

(viii) The administration of the Fund shall be vested in the State Government which should create a separate Division under the Commissioner of Labour for the purpose.

(ix) The Commissioner of Labour should have a Board to advise him in the matter of administration of the Fund. The investment policy of the Fund should be prescribed by the State Government.

(x) The Commissioner of Labour should be the Chairman of the Advisory Board which should consist of three representatives each of the employers and employees and three independent members.

(xi) No administrative charge should be levied on the employer for the management of this scheme. The administrative expenses should be considered as a social obligation of the State.

(xii) As regards the maintenance of contribution cards and submissions of returns etc. as provided under the Central Scheme, the details in that behalf under the Shops and Establishments Statutory Provident Fund Scheme should be worked out in consultation with the representatives of employers.

In all other matters the provisions under the Employees Provident Fund Scheme, 1952, of the Government of India should be embodied in the Shops and Establishments Statutory Provident Fund Scheme.

IX

Acknowledgment and Thanks.

19. The Committee places on record its deep appreciation for the services rendered by Shri R. G. Kaulgi, Assistant Commissioner of Labour, who was the Secretary of the Committee, Shri D. J. Nandedkar, Assistant Research Officer and the other staff particularly Shri S. M. Kadam, Senior Clerk.

(Signed) A. R. BHAT,
Chairman.

(Signed) D. T. LAKDAWALA.
Member.

(Signed) B. M. YAGNIK,
Member.

(Signed) A. K. JOBANPUTRA,
Member.

(Signed) J. K. MODY,
Member.

(Signed) ABBASALI KAMAL,
Member.

(Signed) R. S. THONSEKAR,
Member.

(Signed) I. G. DESAI,
Member.

(Signed) G. M. KHODEY,
Member.

(Signed) R. G. KAULGI,
Secretary.

(Signed) V. G. KASAR,
Official Member.

Bombay, dated the 8th January 1960.

APPENDIX "A"

Provident Fund Scheme for Shops' Employees.
Appointment of a Committee to advise
 Government on the—

GOVERNMENT OF BOMBAY.

LABOUR AND SOCIAL WELFARE DEPARTMENT.

Resolution No. EPF. 2357-I.

Old Secretariat Building, Bombay, the 9th December 1958.
Agrahayana 18, 1880.

RESOLUTION.

The question of introducing a provident fund scheme for the employees of 'shops' and 'establishments' as defined under the Bombay Shops and Establishments Act, 1948, has been under consideration of Government for some time past. For this purpose Government hereby appoints the following Committee to examine the said question and recommend to Government a suitable scheme :—

Chairman.

Shri A. R. Bhat, M.Com., M.L.C., 256, Sadashiv Peth, Poona 2.

Non-official Members.(A) *Independent Members—*

1. Prof. D. T. Lakdawala, Department of Economics, University of Bombay, Bombay 1.
2. Shri B. M. Yagnik, M.L.A., 112, Walkeshwar Road, Bombay 6.

(B) *Employers' Representatives—*

1. Shri A. K. Jobanputra, President, Federation of Bombay Retail Cloth Dealers' Association, 13, Bhangwadi, Kalbadevi Road, Bombay 2.
2. Shri J. K. Mody, President, Chamber of Commerce, Rajkot.
3. Shri Abbasli Kamal, Murtaza Manzil, Nagpur City.

(C) *Employees' Representatives—*

1. Shri R. S. Thonsekar, 13, Durga Bhuvan, Dadabhai Rd., Bombay 23.
2. Shri I. G. Desai, M.L.A., President, Shramjivi Mahamandal, Nanwat Main Road, Surat.
3. Shri G. M. Kohdey, Secretary, Nagpur Pradesh Indian National Trade Union Congress, Kothi Road, Mahal, Nagpur.

Official Members.

The Regional Provident Fund Commissioner, Bombay, or his nominee, Mohatta Market Building, Second floor, Palton Road, Bombay 1.

2. Shri R. G. Kaulgi, Assistant Commissioner of Labour, Bombay, should be appointed as Secretary to the above-mentioned Committee in addition to his own duties.

3. The terms of reference of the Committee shall be as follows :—

(1) To examine the practicability of having a Provident Fund Scheme for the employees employed in 'Shops' and 'Establishments' as defined in the Bombay Shops and Establishments Act, 1948, in cities with a population of one lakh or more persons ;

(2) to suggest a provident fund scheme, broadly on the lines of the Employees' Provident Funds Scheme, 1952 ; and

(3) to suggest the classes of 'Shops' and 'Establishments' to which the Scheme should be applied, in the first instance, and the manner of its extension to other classes and areas.

4. The Committee should submit its report to the State Government within six months from the date of this Resolution.

5. The Chairman and non-official Members of the Committee should be paid travelling allowance and daily allowance for any journey performed by them in connection with the work of the Committee in accordance with the scale 1 specified in rule 1(1)(b) in section I of the Appendix XLII-A, to the Bombay Civil Services Rules (Volume II), as amended from time to time.

6. The expenditure on account of the Committee should be debited to the budget head "47-Miscellaneous Departments—B-Labour—B-12-Special Committees for Enquiry" and met from the grants sanctioned thereunder for the current financial year, by reappropriation, if so necessary.

7. All officers and Departments of Government should be requested to give such assistance as may be required by the Committee for the purpose of the enquiry.

8. The Resolution should be published in the *Bombay Government Gazette* for general information.

By order and in the name of the Governor of Bombay,

B. B. BRAHMBHATT,

Under Secretary to the Government of Bombay,
Labour and Social Welfare Department.

To

- *Shri A. R. Bhat, M.Com., M.L.C., 256, Sadashiv Peth, Poona 2.
- *Prof. D. T. Lakadawala, Department of Economics, University of Bombay, Bombay 1.
- *Shri B. M. Yagnik, M.L.A., 112, Walkeshwar Road, Bombay 6.
- *Shri A. K. Jobanputra, President, Federation of Bombay Retail Cloth Dealers' Associations, 13, Bhangwadi, Kalbadevi Road, Bombay 2.
- *Shri J. K. Mody, President, Chamber of Commerce, Rajkot.
- *Shri Abbasali Kamal, Murtaza Manzil, Nagpur City.
- *Shri R. S. Thonsekar, 13, Durga Bhuvan, Dadabhai Road, Bombay 23.
- *Shri I. G. Desai, M.L.A., President, Shramjivi Mahamandal, Nanawat Main Road, Surat.
- *Shri G. M. Khodey, Secretary, Nagpur Pradesh I.N.T.U.C., Kothi Road, Mahal, Nagpur.
- *Shri P. A. Bhaskar, Regional Provident Fund Commissioner, Bombay.
- *Shri R. G. Kaulgi, Assistant Commissioner of Labour, Bombay.
- The Commissioner of Labour, Bombay.
- The Deputy Commissioner of Labour, Ahmedabad/Nagpur.
- The Registrar, Industrial Court, Bombay.
- The Member, State Industrial Court, Nagpur.
- The Industrial Tribunal, Rajkot.
- All Collectors.
- The Director of Publicity (with request to issue a suitable Press Note).
- The Accountant General, Bombay,
- The Senior Deputy Accountant General, Rajkot,
- The Deputy Accountant General, Nagpur,
- The Pay and Accounts Officer, Bombay,
- The Resident Audit Officer, Bombay,
- The Finance Department.
- All Departments of the Secretariat (except the Separate Department).
- The Manager, Government Central Press, Bombay, with a request to publish the Resolution in Part I-L of the *Bombay Government Gazette* and supply 100 copies of the reprint to this Department.

*By letter.

APPENDIX " B "

No. EPF. 2359/129806-I.

LABOUR AND SOCIAL WELFARE DEPARTMENT.

Old Secretariat Building,

Bombay, 30th September 1959
Asvina 8, 1881.

From

Shri R. G. SHAH,

Assistant Secretary to the Government of Bombay,
Labour and Social Welfare Department ;

To

Shri A. R. BHAT, M.L.C.,

The Chairman, Provident Fund Scheme Committee (Shops and
Establishments), Bombay.*Subject.*—Provident Fund Scheme for Shops' Employees.

Sir,

I am directed to invite a reference to the correspondence ending with this Department letter No. EPF. 2357/111435-I, dated the 27th May 1959, on the above subject, and in forwarding herewith a copy of this Department letter of even number and date, addressed to the Secretary to the Government of India, Ministry of Labour and Employment, is directed to state that Government desires that since the question of extending the Employees' Provident Funds Act, 1952, and the Scheme framed thereunder to Hotels and Restaurants is being considered by the Government of India separately, these establishments may be excluded from the purview of the enquiry by the Committee appointed under Government Resolution, Labour and Social Welfare Department, No. EPF. 2357-I, dated the 9th December 1958.

Yours faithfully,

(Signed) R. G. SHAH,

Assistant Secretary to the Government of Bombay,
Labour and Social Welfare Department.

No. EPF. 2359/129806-I.

LABOUR AND SOCIAL WELFARE DEPARTMENT.

Old Secretariat Building, Fort.

Bombay, September 1959/Asvina , 1881.

From

Shri R. G. SHAH,

Assistant Secretary to the Government of Bombay,
Labour and Social Welfare Department ;

To

The SECRETARY to the GOVERNMENT of INDIA,
Ministry of Labour and Employment,
New Delhi.

Subject.—Extension of the Employees' Provident Funds Act, 1952,
to hotels and restaurants.

Sir,

In continuation of this Government Letter, Labour and Social Welfare Department, No. EPF. 2359/123747-I, dated the 13th July 1959, on the above subject, I am directed to state that this Government has appointed a Committee to examine and recommend to the State Government on the practicability of introducing a suitable provident fund scheme for the employees employed in "Shops" and "Establishments," as defined in the Bombay Shops and Establishments Act, 1948. One copy each of this Department Resolutions No. EPF. 2357-I, dated the 9th December 1958 and 22nd May 1950, issued in this behalf is sent herewith for the information of the Government of India. The question of undertaking suitable legislation accordingly will be examined by the State Government on receipt of the Committees' report. I am to add that the State Government agrees to exclude the Hotels and Restaurants from purview of the proposed State legislation when undertaken.

Yours faithfully,

(Signed) R. G. SHAH,

Assistant Secretary to the Government of Bombay,
Labour and Social Welfare Department,

APPENDIX "C".

ENQUIRY ON THE SUBJECT OF THE INTRODUCTION OF
PROVIDENT FUND SCHEME FOR EMPLOYEES IN SHOPS
AND ESTABLISHMENTS.

Questionnaire.

FOR INDIVIDUAL EMPLOYERS AND FOR ORGANISATIONS OF
EMPLOYERS AND EMPLOYEES.

Question No.	Questions.
1.	<p>What is the name and postal address of your Association/Organisation ?</p> <p>(a) If you are a federation or a composite association having among its members both trade associations and individuals, please furnish names and addresses of the member associations for the industry, viz. "Shops and Establishments".</p> <p>(b) If you are a trade association only with individual membership please state so.</p> <p>(Please send a copy of your constitution and latest annual report).</p>
2.	<p>What is your effective membership ?</p> <p>(a) Association members.</p> <p>(b) Individual members</p> <p>(Effective membership means number of members who paid subscription for the last official year of the Association/Organisation.)</p>
3.	<p>What trades is your Association/Organisation concerned with ?</p>
4.	<p>(a) What are the broad categories of employees in each such trade ?</p> <p>(b) Are the functions for each category distinct and defined ?</p> <p>If so, please describe them.</p>
5.	<p>How would you classify the said categories among the following ?</p> <p>(1) Unskilled.</p> <p>(2) Semi-Clerical/Semi-Skilled.</p> <p>(3) Clerical/Skilled.</p>
6.	<p>(a) What are the prevailing consolidated (basic wage plus dearness allowance) rates of wages in each category ?</p> <p>(b) What are the existing lowest consolidated (basic wage plus dearness allowance) rates of wages in each category ?</p>
7.	<p>Do the rates of wages differ with the size of a shop or establishment ?</p> <p>If so, please illustrate.</p>
8.	<p>How many members of your Association work seasonally ? If they work seasonally, the arrangement of days in the year of the workers may be stated.</p>

Question
No.

Questions.

9. How is a seasonal or peak time work done ?
 (a) By engaging more employees or by working extra hours ?
 (b) How is the extra seasonal work paid for ?
 10. A view is held that as an essential step towards social security, it should be a necessary obligation to provide for a retirement benefit in the form of a Provident Fund. Do you agree with it ? If not, please give reasons.
 11. If a Provident Fund Scheme is to be introduced, should the rate of contribution of the Provident Fund for employees in "Shops" and "Establishments" be as a whole or differently for different trades or differently for different localities or on the trade-cum-locality basis ?
 12. Should the rates of Provident Fund be governed also by size ? (Size as represented by the number of employees in a unit ; such as—
 Class I employing more than five employees.
 Class II employing more than one but not more than five employees.
 Class III employing one employee).
 13. Is the size (the number of employees) an indicator of capacity to pay ?
 14. Would the capacity differ with the character of the trade ? If so, please illustrate.
 15. What rates of Provident Fund Contribution on total wages (basic wage plus dearness allowance) would you suggest ? Please classify in accordance with your replies to questions 4, 11 and 12 above.
 16. How are the general business conditions in the trade or trades represented by your Association/Organisation ?
 17. Are there any awards, settlements, agreements governing the grant of retirement benefits to employees in your trade or in any individual unit therein ? If so, please enclose a copy of such award, settlement or agreement.
 18. Have any Scheme of Provident Fund and/or Gratuity come to prevail by practice in your trade ? If so, please give particulars.
 19. Have you any specific suggestions to make for incorporation in a Scheme of Provident Fund that might be formulated for employees in "Shops" and "Establishments" on the lines of the Employees' Provident Fund Scheme, 1952.
-

Place :

Date :

(G.C.F.) MO-B H 4868—2

Signature of the President
of the Association or Union.

APPENDIX " D "

A NOTE ON THE PROVIDENT FUND SCHEME.

Government of Bombay in the Labour and Social Welfare Department, by Resolution No. EPF. 2357-I, dated 9th December 1958 have appointed a Committee to advise it on the question of examining the practicability of having a Provident Fund Scheme for the employees of "Shops" and "Establishments" as defined under the Bombay Shops and Establishments Act, 1948. The purpose and intention of a Provident Fund Scheme could be given as below :—

A Provident Fund Scheme makes provisions in the interests of certain large classes of employees. Part of the employees' wages is impounded, whether he likes it or not : within narrow limits he has an option to contribute more : the employer has on his side to add a contribution and these sums together with interest, profits or other increments make a total fund of which a defined proportion is held on the individual account of each employee. A provident fund scheme affects people who are poor, people who are being compelled and who are in every large numbers. The intention is that such people shall, in case of retirement, have something to live on and in case of death, have something to leave. So a provision is to be made that when an employee dies, his share if small is to be summarily and directly distributed according to special rules which brush aside the ordinary law as to wills or intestate succession. If his share is large, it is payable to his executor or administrator and to him only on production of his grant. Whether the employee is in the service, whether he be alive or dead, his share is unattachable in the hands of the institution. This is the very basis of the Scheme.

From the employees' point of view the meagre pay they get they are not in a position to lay by anything for themselves or their family, for hayday. Establishment of Provident Fund Scheme will teach them frugality and the advantages of such a system will not meet with any objection of disapproval on their part, as they would realise that the scheme aims at the good of the family and for themselves also. The contribution by the employer will be an impetus for them to join the fund.

The interests of the employers and the employees are generally found to be at variance. In order to establish mutual trust and confidence and to cement the differences between the employers and the employees, a measure like a Provident Fund Scheme would go a great way to promote mutual and healthy relations between them. A Provident Fund Scheme may promote growth of spirit of confidence and co-operation of the employees and the employers would yield better results. By creating such fund, the employers will attract to themselves a class employees which will be contented and in view of the provisions of the Scheme, they would prefer to remain attached to a particular employer.

A comprehensive Provident Fund Scheme may provide for all or any of the matter such as the employees or class of employees who are to join the fund ; the conditions under which an employee may be exempted from joining the Fund, or from payment of contributions ; rate, time and manner of payment

of contribution ; the payment by the employers of such sums of money as may be considered necessary to meet the cost of administering the fund ; constitution of the Board of Trustees ; appointment of officers and servants of the Board ; investment of funds ; audit and accounts ; rate of interest payable to member, etc.

APPENDIX " E "

PROPOSED PROVIDENT FUND SCHEME FOR THE SHOPS AND ESTABLISHMENTS PREPARED BY SHRI R. S. THONSEKAR, MEMBER OF THE PROVIDENT FUND SCHEME COMMITTEE.

The terms of reference to the Committee are :—

- (1) The immediate practicability of having provident fund scheme for the employees employed in Shops and Establishments as defined in the Bombay Shops & Establishments Act, 1948 in cities with a population of 1,00,000 or more persons.
- (2) To suggest the provident fund scheme particularly on the lines of the Employees Provident Fund Scheme, 1952.
- (3) To suggest the classes of Shops and Establishments to which this scheme should be applied in the first instance and the manner of its extension to other classes and areas.

The particular terms of reference denote that Government accepts the principle that there should be a provident fund for the employees in the Shops and Establishments as defined in this Act. What is left to the Committee is to decide the classes of Shops and Establishments that can be covered under the scheme in the first instance, the broad outline of the scheme and the manner of its extension to other classes and areas. That being the position we shall now examine in detail the possible schemes that can be devised with a view to have the benefit to the largest number of persons consistent with the economy and advantages that can be secured for all concerned. Any provident fund scheme that may be devised for the commercial establishments will have to be devised in such a way that—

- (1) the scheme is simple,
- (2) the authority devised to administer the scheme is provided with the machinery to deduct and recover contributions from establishments or parties who may endeavour to get out of the scheme by illegal methods,
- (3) Devise the scheme in such a way that the administration cost is within the capacity of the employers who have ultimately to contribute towards the administration of the fund.

Before we go further we have to take note of the fact that in the 13 cities to which the Minimum Wages Act is applicable as far as the Act of Shops & Establishment employees are concerned, about 60 per cent. to 70 per cent. of the establishments are with less than 5 employees and an equal percentage out of the total employees will be employees in such an establishment. If it is our intention to devise the scheme which will benefit the majority perforce we

are obliged to devise the scheme which will cover even the establishments with less than 2 employees, and it is strongly urged that no class of establishments should be excluded from the proposed scheme of Provident Fund except such establishments as are already having provident fund and benefits under such schemes are not less beneficial than that may be conferred under the proposed scheme.

The scheme in the first instance may be restricted to operate within the areas of cities with more than 1,00,000 population. Authority established to administer the provident fund may have jurisdiction throughout the new State of Bombay. But the actual administration of the fund should be decentralised both regarding collection of the dues as well as payment of the benefits to the workmen covered. For the purpose of administrator for each local area may be appointed with adequate staff under him to recover, record and disburse contributions and benefits.

For the purpose of recording the contribution the employer as well as the employees cash transactions may be minimised and system of stamps devised and stamps worth denominations of 50 nP. or multiple of 50 nP. as the basis be printed. The stamps representing the employers contribution should have a different colour from the colour of the stamps representing the employees' contribution. Each employee covered under the Provident Fund Scheme should be provided with a pass book of the same type as the passport with suitable columns on each page provided for affixing of the stamps representing the employers' and employees' contribution for a period of 20 years, i.e., a page with 24 columns and the book with 20 pages. Sale of these stamps should be arranged through the local post-offices, the postal department working as an agent for the Provident Fund administration.

It should be obligatory on the part of the employer to purchase from the post office, stamps representing employers' contribution, and the employees contribution and affix on to the passport with the employee by the 15th of every month. By the 15th of the month the employer shall be required to send a *Statement* to the administration giving the name of each of employee working with him during the previous month, his contribution book number, amount of contribution on account of the employee and the employees' contribution and the date on which he fixed the stamps on the employees contribution book and this statement should be required to be submitted by the employer to the authorities every month. This statement may also provide for recording the monthly gross wages paid or payable to the employee so that it may enable the administration to check whether the wages paid are equal to or in excess of the minimum wages fixed under the Minimum Wages Act. Thus the returns will serve the dual purpose of verifying whether minimum wages fixed are being paid and at the same time prevent employers from misusing the collections made on behalf of the employee towards the provident fund contribution.

The provident fund administration will thus be in possession of the total collections made from employees as well as employers towards the provident fund every month and it should also be required that post office acting as agents for the provident fund administration submit daily statements of

total stamps sales by each post office within the jurisdiction. Thus while the sale of stamps from the post office will denote the gross amount arrived at on the provident account, the returns received from employers will denote the actual provident accumulation or collections during the month. The difference between sales aggregate of stamps and the total of the stamps return as affixed to the employees' books will show the future liability of the fund. Since the cash collections from the will be flowing into the provident fund authority as and when sales of stamps are affected it should not be difficult to channelise the investment of this fund properly and speedily.

The percentage of contribution from each towards the fund may be fixed at 10 per cent. but as initial measure a start may be made with contributions of 5 per cent. increasing this contribution in gradual stages will the maximum of 10 per cent. is reached at the end of 5 years.

It is to be noted that within the sphere of commercial establishments there can be no other cash benefits provided for the workmen concerned as the percentage of mortality in the commercial establishments are more than in other establishments. Thus, it can be safely presumed the provision of a gratuity scheme to cover all the employees may not be feasible. It is from the point of view of this contingency that we propose that the provident fund contribution rate should be 10 per cent. if not immediately in the near future. The Employees' Provident Fund Act provides for a contribution of 8-1/3 per cent. Though at present one is required to contribute on 6 1/4 per cent. of total wages.

It should be the duty of the provident fund administration to work out the dividend within the total investment returns at the end of the year and distribute to the beneficiaries concerned their share of the dividend out of the earnings of the fund in the ratio of their contributions to the total contributions. Thus as insurance firm pays bonus to its policy holders the bonus they earned on the live policies. — This dividend may be notified in the shape of coupons specifying the given value of the dividend and it shall be cashable at any office of issue under the jurisdiction of the provident fund authority on the employer certifying that—

- (1) the employee's services have been terminated,
- (2) the employee has resigned, or
- (3) the employee has retired,
- (4) terminations of service or dismissal from service for reasons other than gross misconduct.

The coupons with the passport carrying the contributions stamps shall be acceptable at any office of issue after the administration is given adequate opportunity to check up the authenticity of the dividend coupons and the stamp, so that the employer may not escape from the purview of the provident fund.

Renewal of licences of every establishment under the Shops and Establishments Act.

Every year and before renewing the licence every establishment shall be required to file the following statement :—

- (1) Names of the employees who have earned salary or wages during the preceding 12 months.
- (2) The date on which they submitted returns to the provident fund authority giving the date of payment of provident funds dues and the total amount paid as provident fund contribution on account of employees and on account employers separately.
- (3) Licences should not be renewed unless the provident fund authority gives a clearance certificate to the establishments concerned that the employees provident fund dues have been received by the administration.
- (4) There should be deterrent punishment provided for such of the employers as deliberately evading liabilities under the provident fund rules.

Presuming that all the commercial employees will be covered by the administration unit (for example a unit of Bombay city). It is our estimate that the actual collections of provident fund account alone will amount to about Rs. 3,00,00,000 and any administration machinery devised should not cost more than 3 per cent. of the total annual collections.

APPENDIX " F " (a)

BUREAU INTERNATIONAL DU TRAVAIL
GENEVE.

INTERNATIONAL LABOUR OFFICE
GENEVA.

IFC/IK.

13th November 1959.

Ref. No. : SR. 2/0/33.


 Telegrammes }
 Telegrams } INTERLAB GENEVE.

Dear Sir,

I wish to acknowledge the receipt of your letter (No. PFSC/CLVI/108989) in which you ask for copies of provident schemes for small-scale industries and for our views in the matter.

In May 1959 *Japan* enacted the Smaller Enterprise Retirement Allowance Mutual Aid Law to provide a scheme of lump-sum retirement grants for workers in medium and small-scale enterprises, which are considered to be unable to operate individual schemes. The Japanese scheme is largely based on the provident fund principle. Participation is voluntary on the part of employers in enterprises employing not more than 100 workers (not more than 30 workers in the case of enterprises in commerce or services). The contributions vary with the earnings of the persons protected from 200 yen to 1,000 yen per month and are paid by the employer.

When contributions have been paid for more than a year in respect of a worker he qualifies for a lump-sum grant if he retires ; if the contributions have been paid for five or more years the grant is based on the contributions to the credit of the worker, plus interest, increased by a State subsidy of 5 per cent. The amount of the retirement grant where the monthly contributions have been 200 and 1,000 yen respectively are as follows :—

Years of Contribution.	Amount of Grant	
	Contribution of 20 yen. Rs.	Contribution of 1,000 yen. Rs.
5	14,590	70,030
10	40,640	1,86,960
15	74,400	3,42,160
20	1,17,560	5,40,760
30	2,52,670	11,62,270

Mr. R. G. Kaulgi,

Provident Fund Scheme Committee,
Office of the Commissioner of Labour,
Framji Cawasji Institute Building,
Dhobi Talao,
Bombay 2 (Inde).

The Japanese scheme is administered by a corporation, established for the purpose, which maintains reserves for payment of the benefits, but which, subject to specified safeguards, may also advance surplus money obtained by the conduct of its business to medium and small-scale enterprises for their business funds, or for the improvement of their workers' welfare.

The Smaller Enterprise Retirement Allowance Mutual Aid Law has been published in English in *Japan Labour Legislation 1959* by the Ministry of Labour, pp. 583-605. If you wish to have the English text of this law, please let me know and I shall have it copied or photographed for you.

I know of no provident fund scheme other than the Japanese one which is designed specifically and solely for small-scale industries. The statutory provident fund schemes usually apply at least to the larger of the small-scale industries. The Federation of Malaya excludes from the scope of its provident fund undertakings employing fewer than ten workers and Iraq excludes those employing fewer than 30. The legislation of Ceylon provides that regulations may exclude persons in the service of an employer who has fewer than a prescribed number of employees and that of Singapore empowers the board of the provident fund to exempt any classes of persons from the provisions of the Ordinance.

The I. L. O. has published the legislation concerning the establishment of provident funds in *India* (L. S. 1952-Ind. 2) and *Malaya* (L. S. 1951-Mal. 1) and a social security scheme, based on the compulsory savings principle, in *Iraq* (L. S. 1956-Iraq 1). I am enclosing copies of the Iraqi and Malayan texts.

An Act of 9th May 1958 which came into force in June of the same year set up an employees' provident fund in *Ceylon*. The I. L. O. has not published the relevant legislation but I am enclosing a summary of its provisions which was published in *Industry and Labour*, Vol. XXI, No. 11, 1st June 1959. I have recently been informed that some 59,000 employees have already been brought under the scheme, and that it is anticipated that a total of 7,50,000 employees working in about 6,000 establishments and estates all over the island will be brought in within the course of the year. It is hoped eventually to extend the provident fund scheme to the entire working population of Ceylon, numbering 27,00,000.

In 1955 the Government of *Singapore*, under an Ordinance of 1953, established a central provident fund. Consideration is presently being given to the conversion of this fund into a pension scheme. A summary of the Central Provident Fund Ordinance, extracted from the I. L. O. *Report to the Government of Singapore on Social Security* (ILO/TAP/Singapore/R. 3) is appended.

In many countries some of the larger private undertakings have established provident funds for their employees. The I. L. O. has the rules of a few of these funds in its documentation, but it has no duplicates that it can send to you.

Unfortunately the letter which you sent to the I. L. O. on 2nd July 1959 (No. PFSC/VI/63330) must have gone astray and therefore, I do not know on what aspects of provident funds you wish to have the views of the I. L. O. If you will be good enough to write again telling me the specific points in which you are interested, I shall do my best to help you. Meantime, as a general comment, I might say that it has been found that provident funds are easy to administer and are readily understood and accepted by the workers. Such schemes, however, have the disadvantage of protecting their members on an individual basis, without any pooling of the risks. The benefit is limited to the amount standing to the member's on an individual basis, without any pooling of the risks. The benefit is limited to the amount standing to the member's credit in the fund and may be quite inadequate to meet his needs, for example, if he should become disabled at a relatively early age. A very important consideration is that the money accumulated by and for a worker in a provident fund may have lost much of its real value by the time the worker retires and withdraws his capital.

Yours truly,

(Signed) ISABEL CRAIG,
Social Security Division.

APPENDIX " F " (b)

BUREAU INTERNATIONAL DU TRAVAIL GENEVE. INTERNATIONAL LABOUR OFFICE TRAVEL, GENEVA.

Air Mail.

IC/NR

9th December 1959.

Ref : No. SI. 2-0-33.

Telegrammes :

Telegramms :

} INTERLAB GENEVE

Dear Sir,

I wish to acknowledge the receipt of your letter of 18th November 1959 (No. PFSC/CL/VI/128198), with which you enclosed a copy of the letter addressed to the Director of the I. L. O. (No. PFSC/VI/63330) on 2nd July 1959, asking for (a) material on provident funds for, or including, workers in small scale industries in various countries, and (b) general guidance as to the practicability of introducing a provident fund scheme, along the lines of the Employees' Provident Fund Scheme, 1952, for employees in specified classes of the smallest shops and establishments in the larger towns and the cities of the State of Bombay.

As regards (a), such material as is available here was sent to you on 13th November 1959. In this connection I must apologise for an error in the description of the Japanese Smaller Enterprise Retirement Allowance Mutual Aid Law. The State subsidy is not always 5 per cent. of the contributions to the credit of the insured person but varies from 5 to 10 per cent. with the number of contributions years (see paragraph 3 of my letter of 13th November 1959). If you wish to have details of the administrative procedures used in the Schemes of Ceylon, the Federation of Malaya and Singapore, I suggest that you write directly to the three funds concerned for their rules, regulations and reports.

As regards (b), I presume that the scheme would be compulsory. But is it your intention to cover only persons in the smallest of the establishments and Shops defined (units of one or two persons), or to cover all those in establishments and shops having fewer than fifty employees, that is, those which are excluded from the Employees' Provident Fund Scheme, 1952, in virtue of their size? Whatever the size of the undertakings included, the scope of the scheme should be limited to regular workers. However, a qualifying period of employment for membership would be undesirable because some employers might be tempted to lay off a worker as soon as it became necessary to contribute on his behalf. In applying a compulsory provident fund scheme the first task is to identify and register the employers and employees who are liable for contributions. This should not be too difficult since the *Bombay Shops and Establishments Act* provides for a register of employers. A simple and efficient method of collecting contributions should be devised. Regular inspection of the participating shops and establishments is necessary in order to check the correctness of the amounts of contributions paid and to see that all eligible employees are covered. This would be relatively costly in view of the large number of visits entailed.

If it were possible to include workers in small establishments and shops in the existing Employees' Provident Fund Scheme there would be a number of advantages in doing so. Coverage in a single scheme would obviate the necessity to set up a separate administration; the existing provident fund administrative facilities in the State of Bombay could be expanded and developed to handle the increased membership. Coverage in a single scheme would be in the interests of those workers who shift between employment in undertakings with fewer than fifty employees and larger enterprises, since they would maintain their acquired rights and rights in the course of acquisition to their employers' contributions on their behalf.

If the Committee should decide to recommend that employees in shops and establishments with fewer than fifty employees in the State of Bombay should be included in the Employees' Provident Fund Scheme, 1952, it might wish to suggest the desirability of a gradual extension of the application of the scheme, in two or three stages, by size of undertaking. Such a course would facilitate the registration of large numbers of new participants, both employers and employees, and allow an easy adjustment of the administrative arrangements.

The Committee is, I am sure, examining the implications for their plans of the movement to transform the Employees' Provident Fund Scheme, 1952, into an insurance scheme, including the recommendation to this effect made a year ago by the Study Group on Social Security, set up by the Ministry of Labour and Employment. In this connection, may I refer you to the general comments on the relative merits and disadvantages of savings and pension schemes in the last paragraph of my letter of 13th November?

Yours truly,

(Signed) ISABEL CRAIG,

Social Security Division.

APPENDIX " F " (c)

SOCIAL SECURITY.

An Employees' Provident Fund in Ceylon.

An Act¹ to establish a Provident Fund for certain classes of employees was assented to in Ceylon on 9th May 1958 and is in force since 1st June 1958.

Range of Persons protected.—Provisions of the Act.—The occupations to be covered by the Fund were to be determined by regulations. According to the Act, the list of occupations could include all types of employment including employment in the service of a corporation whose capital is wholly or partly Government owned. The regulations could exclude—
(a) persons in the service of an employer who has less than a prescribed number

¹ The Employees' Provident Fund Act, No. 15 of 1958.

of employees; (b) day labourers; (c) employees over 55 years of age (in the case of men) or 50 (women) on first entering the Fund; and (d) a wife employed by her husband. Varying minimum qualifying ages for admission to the Fund might be prescribed for each different type of employment. The regulations could also exclude certain categories of employees in a given trade by prescribing certain qualifying conditions (amount of remuneration, etc.)

Persons excluded by regulations.—The regulations have since been issued by the Minister of Labour, Housing and Social Services on 23rd October 1958.¹ According to these regulations the Act covers (a) employment of every kind except government or local government employment; and (b) employment outside Ceylon in any trade or business which would be covered by the Fund if it were in Ceylon. Directors, partners, persons employed in managerial, executive or technical grades for whom superannuation benefits, etc., are provided under a provident fund or pension scheme established and administered outside Ceylon are excluded. The regulations also exclude (a) persons employed in such managerial, executive or technical grades, or directors or partners nor ordinarily resident in Ceylon; (b) persons employed “by the day or by the job or by the journey”; and (c) a wife employed by her husband.

The regulations also prescribe a minimum age limit of 14 years for admission to the Fund, and give details of procedure and modes of obtaining exemptions from the above rules.

Exemptions under the Act.—A provident fund or a contributory pension scheme which is already in existence may be approved by the Commissioner of Labour, in which case the employees covered by the fund may be exempted from becoming members of the newly established Employees' Provident Fund.

Contributions.—All employees and their employers must pay contributions to the Fund for each month of employment. The employee's contribution is 4 per cent. of his earnings and the employer pays 6 per cent. of the whole payroll by way of global contribution for his employees as a whole.

An employee and his employer may choose to pay higher contributions; once made, such choice is irrevocable.

The interest on contributions is not less than 2½ per cent. per annum. If the assets of the fund exceed liabilities by 10 per cent. this rate of interest may be increased. Where the income from capital invested by the Fund is insufficient to cover the interest payable to members the amount of the deficit will be met out of money provided by Parliament for the purpose.

Benefits.—The Fund provides old-age, invalidity and survivors' benefits in the form of a lump sum paid on retirement at the age of 55 (in the case of men) or 50 (women). The lump sum is equal to the total contributions paid by employer and employee to the credit of the employee's individual account plus at least 2·5 per cent. of the interest accrued.

¹ Employees' Provident Fund Regulations (Supplement to the *Ceylon Government Gazette*, 31st October 1958).

The lump sum is also paid if a member has to leave his employment on account of permanent total incapacity certified by a registered medical practitioner, or if a female worker leaves her employment on marriage. It is also paid, on the insured person's death while still in employment, to a survivor nominated by the insured person as his beneficiary or, failing such nomination, to his legal heir.

Claims Procedure.—The lump sum is paid to the entitled persons on presentation of a claim in a prescribed manner. The claim is upheld or rejected by the Commissioner for Labour or by an officer appointed by the Commissioner for the purpose. There is also a tribunal of appeal.

Administration.—The general administration of the Fund is entrusted to the Commissioner (this includes his deputy or assistant). He appoints the necessary staff for administration of the scheme.

The Fund, the contributions received, the operations of paying benefits certified by the Commissioner and the investments carried out by the Fund are all controlled by the Monetary Board. The income from investments carried out by the Fund is exempt from income tax.

APPENDIX " F " (d)

INTERNATIONAL
LABOUR OFFICE.

LEGISLATIVE SERIES.
1956—Iraq I.

IRAQ¹.
Social Security.

Social Security Law. Dated 17th May 1956 (6 Shawwal 1375). No. 27 of 1956 (Al-Waqayi'u al' Iraquiya, 2nd June 1956, No. 3799).

1. For the purposes of this Law the following expressions have the following meanings :—

“ Minister ” the Minister for Social Affairs ;

“ Ministry ” the Ministry of Social Affairs ;

“ Director-General ” the Director-General of Labour and Social Security ;

“ Directorate-General ” the Directorate-General of Labour and Social Security ;

“ employee ” a person working for an employer for wages or by way of apprenticeship or as a probationer, irrespective of the nature of his work, and who is, while working, under the employer's guidance or direction ;

“ employer ” the person (real or artificial) responsible for the payment of wages to an employee ;

“ insurable employment ” employment covered by the provisions of this Law ;

- “insurable employee” an employee working in insurable employment ;
- “contribution” the amount payable in respect of an insurable employee ;
- “benefit” the amount payable under this Law ;
- “insured person” a person in respect of whom contributions have been paid and to whom or in respect of whom benefits have not been paid equal in the aggregate to the aggregate of credits received by him ;
- “credit” an amount of 40 fils for each contribution paid in respect of a person ;
- “social security balance” the difference between the aggregate of credits received by an insured person and the aggregate of benefits paid to or in respect of him ;
- “social security book” a book issued by the Ministry in accordance with this Law for the purpose of recording contributions paid in respect of the insured person and such other matters as are necessary for the application of this Law ;
- “social security stamp” a stamp issued by the Ministry for the purpose of the payment of contributions ;
- “qualified person” a person qualified to receive a benefit in accordance with this Law ;
- “survivors” include husband, wife, adolescent child, unmarried daughter, daughter without income and all ascendants and descendants who are poor or incapable of earning.

Insurable Employment.

2. (1) “Insurable employment” means employment with an employer of 30 or more employees.

(2) The Government may issue regulations for the following purposes :—

(a) prescribing that employment with any employer of a smaller number of employees than that mentioned in (1) above shall be treated as insurable employment ;

(b) prescribing that the following classes of employment shall be treated, wholly or partially, as insurable employment :—

- (1) employment in any undertaking or industry or in any class of undertaking or industry ;
- (2) employment in any specified area or place ;
- (3) employment in any occupation or any specified class of occupations ;
- (4) employment with any employer or any specified class of employers ;
- (5) employment in casual, incidental or temporary work ;
- (6) employment at a higher or lower rate than a fixed rate of wage ;
- (7) employment under conditions entitling the employee to draw a benefit or benefits similar in nature to those provided for in this Law ;
- (8) employment in agriculture, horticulture and forestry.

3. (a) Any period of absence from work for which an insurable employee is paid in accordance with the Labour Law¹ in force shall, for the purpose of this Law, be considered insurable employment, except any period for which he receives compensation for an industrial injury or an occupational disease.

(b) The period of insurable employment referred to in the preceding paragraph shall be deemed to follow the last day on which the employee worked.

Contributions.

4. An employer shall pay in respect of each insurable employee employed by him a contribution of 25 fils for each day of his employment with him : Provided that—

(a) six contributions only (150 fils) shall be payable in respect of any seven consecutive days of employment during which the employee has been granted at least one rest day ;

(b) 26 contributions only (650 fils) shall be payable in respect of any one month of employment during which the employee has been granted at least one rest day in each seven days ;

(c) not more than one contribution shall be paid in respect of any one insurable employee for any one day of insurable employment. Where an employee is employed in insurable employment on the same day by two employers, the first employer shall pay the contribution in accordance with the provisions of this Law and the second employer shall pay 15 fils for each of the said days to the Social Security Fund mentioned in article 25 of this Law according to the method prescribed by regulation. The Government shall make no contribution in respect of the payment made by the second employer ;

(d) an employer may deduct from the wages of the insurable employee 10 fils for each contribution paid in respect of him, and the sum so deducted shall be deemed part of the employee's wages. No deduction shall be made for any contribution paid for any period of insurable employment outside that for which the wages are paid.

5. An insured person shall receive a credit of 40 fils for each contribution paid in respect of him.

6. A person shall be deemed to be employed for a day if he is employed for any period between midnight on one day and 12 o'clock on the succeeding night. Regulations may make special provision for shift workers or workers whose daily hours of work include some period before midnight and some period after midnight.

7. The contribution payable in respect of any insurable employee for any period of employment shall be paid by the employer not later than the time of payment of the wages to that employee for that period of employment irrespective of the period for which wages must be paid.

¹ Legislative Series, 1936 (Iraq 2), 1954 (Iraq 1B).

8. A contribution shall be deemed to have been paid when a social security stamp has been affixed in the insurable employee's social security book. Regulations may provide, in special cases, for the payment of contributions by methods other than the affixation of stamps.

Benefits.

9. The benefits payable to or in respect of the qualified insured person shall be—

- (a) old-age benefit ;
- (b) permanent invalidity benefit ;
- (c) survivor's benefit ;
- (d) marriage benefit ;
- (e) maternity benefit ;
- (f) death benefit (funeral, burial and shroud) ;
- (g) unemployment benefit ;
- (h) sickness benefit.

10. The amounts of benefit payable under this Law shall be fixed as follows :—

- (a) Old-age benefit, invalidity benefit, survivor's benefit ; the amount of the insured person's social security balance ;
- (b) marriage benefit, maternity benefit, funeral benefit : 5 dinars, or the amount of the insured person's social security balance, if that is less ;
- (c) unemployment benefit and sickness benefit ; 150 fils a day or the amount of the insured person's social security balance if that is less, payable in the following manner :

(1) a qualified person shall be paid not more than one day's unemployment or sickness benefit for each ten days of employment for which a contribution has been paid ;

(2) unemployment or sickness benefit shall not be paid continuously for more than 28 days. Nor shall both of these benefits be paid together at the same time.

11. The Director-General shall determine the manner, times and places of payment of benefits.

12. Where the Director-General is satisfied that payment of a benefit in instalments is in the interest of the qualified person, it shall be paid in such instalments as may be decided by the Director-General.

13. Where more than one person is qualified to receive a survivor's benefit in respect of the same insured person, that benefit shall be divided among such qualified persons in such proportions as are prescribed by regulation.

14. Where more than one person is qualified to receive a maternity or a death benefit, the Director-General shall determine the proportions payable to each qualified person. The total payments in each case shall not exceed 5 dinars.

15. (a) No benefit shall be payable unless a claim is lodged with the Director-General by the person qualified to receive the benefit. Where the Director-General is satisfied that on account of infirmity or for some other valid reason a qualified person is unable to claim benefit he may accept a claim from some other person authorised to act on behalf of that qualified person.

(b) A claim for benefit shall be made in such form and in such manner as is determined by the Director-General.

16. Marriage, maternity, survivors' and death benefits shall not be payable unless a person has become qualified to receive that benefit and has lodged a claim within the time prescribed in the regulations.

17. (1) No benefit shall be payable to a person who—

- (a) is outside the territory of the Kingdom of Iraq ; or
- (b) is imprisoned ; or
- (c) has been certified as insane.

(2) Notwithstanding the preceding provision, the Director-General may pay the benefit to the legal dependants of an insured person in accordance, with the objectives of this Law and in such proportions as he may decide, and the payment shall be deemed to have been made to the qualified person.

Qualification for Benefits.

18. (1) An insured person shall be qualified to receive an old-age benefit if the Director-General is satisfied that he has attained the age of 60 years in the case of a man and 55 years in the case of a woman. Such person shall cease to be a beneficiary of insurable employment thereafter.

(2) An insured person shall be qualified to receive a permanent invalidity benefit if the Director-General is satisfied that he is permanently incapacitated for work and that the degree of incapacity is not less than 75 per cent. according to a report from an official medical board.

(3) A person shall be qualified to receive a survivor's benefit or part thereof if the Director-General is satisfied that he was a dependant of the insured person.

(4) An insured person shall be qualified to receive a marriage benefit once only if the Director-General is satisfied that he has contracted a legal marriage. A second marriage benefit shall be paid only in the case of a marriage following the death of either of the couple.

(5) An insured person shall be qualified to receive maternity benefit if—

- (a) the woman satisfies the Director-General that she has given birth to a live or still-born child ;
- (b) the man satisfies the Director-General that his wife has given birth to a live or still-born child. Multiple births shall be reckoned as a single birth.

(6) An insured person shall be qualified to receive a death benefit if the Director-General is satisfied that he has paid the cost of the funeral and burial of a deceased legally dependent relative over one year of age. Not more than one death benefit shall be payable in respect of any one deceased person.

(7) An insured person shall be qualified to receive unemployment benefit from the seventh day of his unemployment (or the date of his claim for benefit if this claim is lodged after the seventh day of his unemployment) if he satisfies the Director-General that he—

- (a) is unemployed ;
- (b) is able and willing to work ;
- (c) has taken reasonable steps to obtain work ;
- (d) is not a participant in a strike at the time of claiming the benefit and during receipt thereof ;
- (e) is not voluntarily unemployed or unemployed as a result of misconduct as a worker.

(8) An insured person shall be qualified to receive sickness benefit from the date of expiry of any sick leave to which he is entitled under the Labour Law or any other law if a claim for benefit is lodged in which he satisfies the Director-General that—

- (a) he is temporarily incapacitated for work ;
- (b) he has lost wages or salary as a result of that incapacity.

19. Where a person is qualified to receive unemployment or sickness benefit in respect of any period during which he is receiving or is entitled to receive a regular payment by way of compensation for such sickness or unemployment under the Labour Law or regulations issued thereunder, or under any law relating to the payment of such compensation, the amount of benefit payable to him shall be reduced by the amount to which he is entitled by way of compensation.

Social Security Book.

20. (1) The Director-General shall issue immediately a social security book to all persons seeking employment. No person shall be engaged in insurable employment unless he is in possession of a valid social security book issued to him in accordance with this Law. No employer shall employ an insurable employee unless he produces for the employer's inspection a valid social security book issued to him.

(2) Any person who loses his social security book shall apply to the Director-General for a new one.

21. No person other than the employer or a person authorised by this Law or regulations issued thereunder or on the instructions of the Director-General shall affix any stamp to, make any entry in, or in any way mark a social security book.

22. An employer may authorise any person to exercise on his behalf his obligations under this Law or the regulations issued thereunder or on the instructions of the Director-General in respect of a social security book: Provided that—

- (1) no omission on the part of a person so authorised shall release or excuse an employer from his obligations; and
- (2) no employee shall be authorised to exercise such obligations in respect of his own social security book.

23. (1) No person, except as authorised by this Law or regulations issued thereunder, shall retain in his possession a social security book belonging to another person without the consent of that person.

(2) A person who finds or possesses a social security book in any way other than is authorised by this Law shall within 24 hours deliver such book against a receipt—

- (a) to the legal owner; or
- (b) to the nearest police station; or
- (c) to any official of the Directorate-General; or
- (d) to the nearest post office.

Those mentioned in (b), (c) and (d) shall hand over the book to the appropriate section of the Directorate-General.

24. Instructions issued by the Minister shall provide for all or any of the following in relation to social security books—

- (1) care, custody and control;
- (2) affixation and endorsement of social security stamps;
- (3) making of entries whether in respect of insurable employment or otherwise, or in respect of an insurable employee or any other person;
- (4) cancellation or surrender;
- (5) period or conditions of validity.

Social Security Fund.

25. (1) A Social Security Fund shall be established and financed by the revenue ensuing from the sale of the social security stamps and contributions paid by any method other than the affixation of stamps. The Government shall, in addition, provide in the budget and pay into the Fund each year a sum equal to 60 per cent. of the total proceeds from these two sources.

(2) In addition to payments made into the Fund under paragraph (1) of this article, there shall be paid into the Fund—

- (a) amounts payable under any law or regulations issued thereunder;
- (b) amounts donated to the Fund whether by way of endowment or bequest or gift;
- (c) amounts recovered as a result of overpayment, a wrongful payment, or an illegal payment of benefit;
- (d) appeal fees mentioned in paragraph (3) of article 38,

(3) The whole balance of the Fund shall be carried forward at the end of each fiscal year to the following fiscal year.

(4) The Fund shall be used for the payment of benefits and for payments authorised by this Law and for no other purpose: Provided that the Social Security Board shall invest any portion of the Fund in excess of the amounts required for the meeting of current liabilities. The classes of securities from which the Board shall select its investments shall be defined by regulation, having due regard to the necessity of maintaining the real value of the sums invested.

(5) The interest payable on any securities representing an investment of the Fund shall be paid into the Fund.

26. (1) A Social Security Board shall be established consisting of three members, one of whom shall be chairman. This Board shall be responsible for the control and investment of the Fund. The Board shall be a juristic person entitled to own immovable property with administrative independence. The functions and allowances of its members shall be prescribed by regulation.

(2) The Social Security Board shall consist of—

(a) The Governor of the National Bank or the Director-General of the Rafidain Bank, as chairman;

(b) a member of the administrative Board of the National Bank or of the Rafidain Bank as member;

(c) the Chairman of the Chamber of Commerce, or a representative of large trading and industrial interests, as member.

(3) The chairman and members of the Board shall be appointed by the Council of Ministers. The chairman shall hold office as long as he holds his post. The member mentioned in paragraph 2(b) shall be appointed for three years and the members mentioned in paragraph 2(c) for two years in the first instance, and thereafter the appointment shall be for three years.

(4) The Council of Ministers shall be the responsible authority for appointing and terminating the services of the chairman and members of the Social Security Board.

(5) In the event of the absence of the chairman or any member of the Social Security Board, the Council of Ministers shall appoint a person to replace temporarily the absent chairman or member.

27. The Board shall furnish annually to the Minister a report on the state of the Fund together with an estimate of the value of its investments. This report, together with the report of the Director-General, shall be presented to the Council of Ministers for approval.

28. Not later than three years after the application of this Law the Board shall furnish to the Minister a report regarding the payment of old-age, permanent invalidity and survivors' benefits by way of allowances or pensions and shall make such other recommendations on the law in general as it may think fit.

29. The Board shall from time to time make available to the Director-General such sums as may be necessary for the payment of benefits or for other payments authorised by this Law.

Administration.

30. (1) The Director-General shall be responsible to the Board for the enforcement and administration of this Law and in particular shall—

- (a) determine whether or not any employment is insurable employment and ensure the enforcement of the law in relation to the payments to be made to the Social Security Fund ;
- (b) settle claims for benefits ;
- (c) make payments of benefits and other payments authorised by this Law.

(2) The Director-General may delegate all or any of his powers or functions under this Law.

31. The Director-General may for the purpose of this Law require the production of documents, and he or his representative may visit or enter any premises or establishment, other than private houses, at any hour of the day to carry out any enquiry or examination or inspection of the registers, books, social security books and other documents relating to employees to ascertain that they conform with the provisions of this Law and the regulations issued thereunder. The employer shall make every facility available for this purpose.

32. The Director-General shall furnish annually to the Minister and to the Board a report with statistics on the administration and operation of this Law.

Miscellaneous.

33. (1) The amount of benefit payable to a foreigner shall be one-half of the benefit payable to an Iraqi under this Law, but his social security balance shall be reduced by twice the benefit payable to him.

(2) Where a foreigner is a national of a country which has entered into an agreement or treaty with the Government of Iraq for the reciprocal treatment of nationals in respect of the payment of benefits that foreigner shall, for this purpose, be treated as a national of Iraq.

34. (1) Regulations may provide for the payment to a person of his social security balance or any part thereof, on proof that—

- (a) he is about to leave Iraq ;
- (b) if a married woman, or widow, she has ceased to engage in insurable employment ;
- (c) if a man, he has ceased to engage in insurable employment for a number of years, and satisfies the Director-General that he is unlikely again to engage in insurable employment.

(2) Such regulations may place any conditions, limitations or restrictions on such payments and may provide that such payments shall cancel or reduce such person's social security balance to such extent as is prescribed. Unless otherwise prescribed, the social security balance of the person concerned shall be reduced by the amount of any payment made under this article,

35. Subject to this Law a benefit or any payment under this Law shall be absolutely inalienable whether by way of, or in consequence of, sale, assignment, charge, attachment or otherwise.

36. No employer shall, after the enforcement of this Law or in anticipation of its enforcement, for the purpose of passing on to an employee the amount of contribution payable by the employer—

(1) reduce the wage or salary payable to an employee ;

(2) pay to an employee a wage lower than that ordinarily payable to him prior to November 1955 for a similar class of work.

37. Where the Director-General is satisfied that a person has been engaged in insurable employment but no contribution has been paid in respect of him for all or any of that period of employment, he may pay the contribution otherwise payable by the employer in respect of that person and deduct from the benefit or the social security balance of that insured person 10 fils for each contribution paid in respect of him.

The amounts paid by the Director-General in accordance with the above paragraph, less any part thereof recovered from the insured person, shall constitute a first charge on the employer to the Director-General, who may recover them in accordance with the provisions of the law concerning the collection of debts due to the Government.

38. (1) Any interested person aggrieved by a decision of the Director-General may within 15 days from the date of notification lodge an appeal with the Board of Arbitration against that decision.

(2) Appeals shall be heard by three arbitrators selected by the Board from a panel of arbitrators chosen by the Minister.

(3) A fee of 250 fils shall be paid by the appellant when lodging his appeal.

(4) Where an appeal involves a decision as to incapacity to work or a percentage thereof, a licensed medical doctor shall be one of the arbitrators.

(5) The decision of the Board of Arbitration, whether unanimous or a majority decision, shall be final and binding on all parties.

(6) Regulations may provide for the manner and method and all necessary matters relating to conducting and hearing appeals and to the allowances to be paid to arbitrators.

39. The accounts of the Fund shall be subject to audit by the Controller-General of Accounts.

40. Petitions and claims for benefit submitted under this Law shall be exempted from all fees (including stamp fees) except fees payable under paragraph (3) of article 38 of this law.

41. Any contravention of the provisions of this Law or regulations or instructions issued thereunder shall be punishable by imprisonment for not more than three months or by a fine of not more than 5 dinars. Where an offence consists of failure to pay a contribution a separate offence shall be deemed to have been committed for each day and in respect of each employee in respect of whom such failure occurs. In addition to any fine or term of imprisonment, the offender shall be required to pay to the Social Security Fund an amount equal to the contribution unpaid.

42. Persons covered by the provisions of laws and regulations concerning pensions and official and semi-official provident funds shall be exempted from the application of this Law.

43. Instructions may be issued to facilitate the enforcement of this Law.

44. This Law shall come into force six months after its publication in the Government Gazette. The Ministry may make preparations for the administrative machinery from the time of its publications.

45. The Ministers of State are charged with the enforcement of this Law.

APPENDIX "F" (e)

FEDERATION OF MALAYA.¹

Provident Funds.

An Ordinance to make provision for a provident fund for persons employed in certain occupations. No. 21. Assented to 26 May 1951. (Federation of Malaya Government Gazette, No. 12, Second Supplement, 31st May 1951, p. 679.)

1. *Short title and commencement.*—This Ordinance may be cited as the Employees Provident Fund Ordinance, 1951, and shall come into force on such date as the High Commissioner may, by notification in the Gazette, appoint and the High Commissioner may appoint different dates for different provisions of this Ordinance.

2. *Interpretation.*—In this Ordinance, unless the context otherwise requires—

“approved fund” means a provident fund or other scheme for the benefit of employees established by an employer or by a group of employers and declared by the Board under Section 16 of this Ordinance to be an approved fund and includes any scheme in respect of persons in a pensionable employment with the Government of the Federation or of any State or Settlement and if any doubt arises as to whether any person is in such employment or not the decision of the High Commissioner in Council shall be final;

"the Board" means the Employees Provident Fund Board established under section 3 of this Ordinance;

"employee" means any person—

- (a) who has attained the age of sixteen years;
- (b) who has entered into a contract of service or apprenticeship, whether written or oral and whether expressed or implied, to work for an employer in a scheduled employment,
- (c) who has worked for the same employer in such scheduled occupation for a continuous period of not less than three months, and
- (d) whose wages do not exceed four hundred dollars a month:

Provided that where, after an employee becomes liable to pay contributions as provided in section 7 of this Ordinance, the wages of such employee are increased and exceed four hundred dollars a month, such employee shall not, by reason only of such increase, cease to be an employee, but his wages shall, for all purposes of this Ordinance, be deemed to be four hundred dollars a month;

"employer" means the person with whom an employee has entered into a contract of service or apprenticeship and includes—

- (a) a manager, agent or person responsible for the payment of salary or wage to an "employee",
- (b) any body of persons whether or not statutory or incorporated, and
- (c) the Government of the Federation or of any State or Settlement, any municipality, Harbour Board, or the Central Electricity Board, and, where an employee is employed with such Government or body or with any officer on behalf of such Government or body, the officer under whom such employee is working shall be deemed to be an "employer":

Provided that no such officer shall be personally liable under this Ordinance for anything done or omitted to be done by him, as an officer of such Government or body, in good faith;

"normal period of work" means the number of hours stated or implied in an employee's contract of service or apprenticeship to be the normal number of hours of work per week, or for any day in the week, to be performed by him;

"Postmaster-General" means the Postmaster-General, Malaya;

"scheduled employment" means an employment specified in the First Schedule to this Ordinance;

"wages" means the remuneration in money due to an employee under his contract of service or apprenticeship whether agreed to be paid monthly, weekly, daily or otherwise—

- (a) in respect of the normal periods of work to be performed by the employee, or
- (b) where payment is calculated in relation to a set task or tasks, in respect of the number of tasks completed by the employee, or

(c) where payment is calculated in relation to the volume of work done, in respect of the work completed by the employee, together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living.

3. (1) Establishment of Employees Provident Fund Board.

(1) For the purposes of this Ordinance there shall be a Board consisting of—

(a) six persons holding office of emolument under the Government of the Federation, one of whom shall be the Postmaster-General ;

(b) six persons representing employers not being persons holding office of emolument under the Government of the Federation or of a State or Settlement or employed with any municipality, Harbour Board or the Central Electricity Board ; and

(c) six persons representing employees,

to be appointed by the High Commissioner in Council and the persons so appointed shall elect one of their number to be Chairman of the Board.

(2) The Postmaster-General shall perform such duties as are imposed on him by this Ordinance and as may be assigned to him by the Board.

(3) Members of the Board shall not be entitled to any remuneration but may be paid such travelling and subsistence allowances as may be fixed by the Board with the approval of the High Commissioner in Council.

(4) The Board shall be a body corporate and shall, by the name of "The Employees Provident Fund Board", have continuous succession and shall have and use a common seal.

(5) The Board shall have such powers and shall perform such duties as are given or imposed by this Ordinance or as may be prescribed by the High Commissioner in Council, and may by instrument in writing under the common seal delegate to any person all or any of such powers and duties.

(6) The Board shall have powers to make rules for the conduct of its proceedings.

4. *Establishment of Provident Fund.*—(1) For the purposes of this Ordinance there shall be a fund to be called the Employees Provident Fund, hereinafter referred to as the Fund, into which shall be paid all contributions required to be made under this Ordinance and out of which shall be met all payments required to be paid under this Ordinance.

(2) The Board shall be the Trustee of the Fund and all moneys belonging to the Fund shall be deposited in trust in a bank or banks approved by the Board or shall be invested by the Board in accordance with the provisions of the Trustee Ordinance, 1949.*

(3) Interest shall be payable on contributions to the Fund at such rate per annum, not being less than two and one half per centum, as the Board may declare after and in respect of each year ending on the thirty-first day of December :

* No. 66 of 1949.

Provided that—

(a) no such interest shall be payable in respect of the year during which section 7 of this Ordinance comes into force ;

(b) the Board shall not declare a rate of interest exceeding two and one half per centum per annum until the assets of the Fund, valued at the market rate, exceed its liabilities by ten per centum ; and

(c) If on the last day of any such year the excess of the assets of the Fund, valued at the market rate, over its liabilities is insufficient to defray the payment of such interest at the rate of two and one half per centum, such deficiency shall be met out of the general revenues of the Federation.

(4) Where any deficiency in the assets of the Fund has been met, in accordance with paragraph (c) of the proviso to sub-section (3) of this section, the amount of such deficiency shall be repaid by the Board to the general revenues of the Federation from the assets of the Fund at the end of the year following the year in respect of which such deficiency was met and shall then be a first charge upon the assets of the Fund.

5. *Expenses.*—(1) All expenses incurred in connection with the administration of the Fund shall be defrayed out of the moneys of the Fund.

(2) All expenses incurred in connection with the appointment of inspectors as provided by section 19 of this Ordinance and, generally, in carrying this Ordinance into effect shall be payable out of the general revenues of the Federation.

(3) If any question arises as to whether any expenses are incurred in connection with the administration of the Fund or in carrying this Ordinance into effect, such question shall be decided by the High Commissioner in Council, whose decision shall be final.

6. *Statement of accounts.*—(1) The accounts of the Fund shall be audited at least once annually by the Director of Audit who shall submit a report thereon to the Board.

(2) As soon as practicable after the first day of January of each year the Postmaster-General shall submit to the Board an account of the revenue and expenditure of the Fund, of contributions received and of withdrawals made and of interest credited to contributors, during the preceding year ending on the thirty-first day of December, together with a statement of the assets and liabilities of the Fund, and such account and statement, together with the Director of Audit's report thereon shall be laid before the Legislative Council and published in the Gazette.

7. *Rate of contributions.*—(1) Subject to the provisions of section 16 of this Ordinance, every employee and every employer of a person who is an employee within the meaning of this Ordinance shall be liable to pay monthly contributions at the rate respectively set out in the Second Schedule to this Ordinance :

Provided that the Board may, at its discretion and on such terms and conditions as it may impose, authorise an employer, or a class or classes of employers, to pay such contributions at intervals of three months.

(2) Without prejudice to the provisions of sub-section (1) of this section, an employer and an employee may, at any time, by mutual agreement, elect each to pay equal monthly contributions at a rate which exceeds the rate respectively set out in the Second Schedule to this Ordinance by one dollar or a multiple of one dollar.

(3) Notice of such election shall be given to the Board in such manner and form as may be prescribed by the Board and where any such notice has been given the provisions of this Ordinance shall, in respect of the employer and employee who have elected as aforesaid, apply as if the rate of contribution which such employer and employee have elected to pay, were the rate respectively set out in the Second Schedule to this Ordinance.

8. *Payment of contributions.*—Except where otherwise provided in this Ordinance, the employer shall, in the first instance, be liable to pay both the contributions payable by himself and also, on behalf of and to the exclusion of the employee, the contribution payable by that employee; and for the purposes of this Ordinance contributions paid by an employer on behalf of an employee shall be deemed to be contributions by the employee.

9. *Employer's contribution irrecoverable from employee.*—(1) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages or remuneration of, or otherwise to recover from, the employee the employer's contribution.

(2) If an employer deducts or attempts to deduct from the wages or other remuneration of any employee the whole or any part of the employer's contribution, he shall, on conviction, be liable to a fine not exceeding one hundred dollars in respect of each such employee.

10. *Recovery by employer of employee's contribution.*—(1) Subject to the provisions of this section, the employer shall be entitled to recover from the employee, in accordance with the provisions of this section, the amount of any contribution payable on behalf of the employee.

(2) The amount of any contribution payable by the employer on behalf of the employee shall, notwithstanding the provisions of any written law or any contract to the contrary, be so recoverable by means of deductions from the wages of the employee due from the employer to the employee and not otherwise.

(3) No deduction of any contribution shall be made as provided by sub-section (2) of this section—

- (a) except at the time wages are paid to the employee; and
- (b) other than of the contribution in respect of the wages which are then being paid :

Provided that, subject to such conditions as may be prescribed by the Board, where an employer has, by mistake, omitted to deduct any contribution or part of any contribution payable by him on behalf of the employee, then, such contribution or part thereof may be deducted from the wages payable

by such employer to the employee not later than six months from the date of the payment of the wages in respect of which the contribution or part thereof was omitted to be deducted.

(4) Any employer who contravenes the provisions of sub-section (2) or (3) of this section shall on conviction be liable to a fine not exceeding five hundred dollars.

11. *Penalty for failure to pay contributions.*—If any employer fails to pay any contribution which he is liable under this Ordinance to pay he shall be liable on conviction to a fine not exceeding one hundred dollars.

12. *Contributions to be paid into the Fund.*—(1) All sums recovered or collected on account of contributions under this Ordinance shall be paid into, or carried to, the Fund in such manner as the Board shall direct.

(2) The Postmaster-General shall credit each employee with the amount of contributions paid in his respect by the employer on his own behalf and on behalf of such employee, and, at the end of each quarter, with the interest on such amount in such manner as the Board shall direct.

13. *Authority for withdrawals from Fund.*—(1) No sum of money standing to the credit of an employee may be withdrawn from the Fund except with the authority of the Board and, subject to any regulations and rules made under sections 20 and 21 of this Ordinance, such authority shall not be given unless the Board is satisfied that—

- (a) the employee has died ; or
- (b) The employee has attained the age of fifty-five years ; or
- (c) on medical evidence, the employee is no longer capable of being, and is not likely to be again, an employee ; or
- (d) the employee is about to leave Malaya with no intention of returning thereto ; or
- (e) a person has ceased to be an employee for a period of at least two years and it is not likely that he will again be an employee :

Provided that where the number of monthly contributions paid under this Ordinance in respect of an employee is less than sixty, the authority of the Board for the withdrawal of money in the circumstances mentioned in paragraphs (d) and (e) of this sub-section shall be limited to a sum not exceeding the amount of the contributions of such employee and the interest thereon :

Provided further that, in the case of an employee who immediately before being about to leave Malaya or before ceasing to be an employee, as the case may be, had been employed by the same employer for a period of at least five years, the Board may, during the five years immediately following the coming into force of this section, at its discretion authorise the withdrawal of the amount of contributions of such employer and the interest thereon in addition to the amount of contributions of such employee and the interest thereon.

(2) When a person withdraws any amount standing to his credit in the Fund, he shall not thereafter be treated as an employee notwithstanding that, but for the provisions of this sub-section, he would be an employee, for the purposes of this Ordinance.

14. *Withdrawals to be made in lump sum.*—When authority is granted under section 13 of this Ordinance for the withdrawal of any amount from the Fund, the whole amount, together with any interest that may have accrued thereon, shall be withdrawn in a lump sum but the withdrawal may be made at any time.

15. *Contributions and deposits not to be assigned or attached.*—Notwithstanding anything to the contrary contained in any other written law—

(a) no sum deducted from the wages of an employee under section 9 of this Ordinance ;

(b) no amount payable by the employer as his contribution ; and

(c) no amount standing to the credit of an employee in the Fund ;

shall be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever :

Provided that, where an employee has been convicted of an offence under the Penal Code* and his employer proves to the satisfaction of a competent Court by which the employee was convicted that he has suffered a definite financial loss as a direct and immediate result of such offence, the Court may order that a payment to such employer be made out of the Fund of a sum not exceeding the amount of such loss or the amount of employer's contribution already paid or payable to the Fund by such employer or employee's behalf and the interest thereon, whichever is the lesser, and such sum shall thereupon be paid to such employer from the employer's contributions so paid, or so payable, or from both, and from the interest thereon.

16. *Approved funds.*—(1) Any employer or group of employers who, before the date on which this section comes into force, has established provident fund or other scheme for the benefit of all or of a group of his or their employees shall, within one month of such date furnish the Board with such particulars of such provident fund or other scheme as the Board may prescribe or in any particular case require and, if after examining such particulars the Board is satisfied that such provident fund or other scheme provides for an employee benefits not less advantageous to him than the benefits which are provided for an employee by the Fund, the Board may declare such provident fund or other scheme to be an approved fund ; and, if the Board so declare, no contributions shall become payable to the Fund by the employees for whose benefit such approved fund has been established or by the employer or employers of such employees in respect of such employees.

*The Laws of the Federated Malaya States, 1935, Vol. II, ch. 45, Federation of Malaya Ordinance No. 32 of 1948.

(2) Any employer or group of employers who, after the date on which this section comes into force, proposes to establish a provident fund or other scheme for the benefit of all or a group of his or their employees shall furnish the Board with such particulars of that proposed provident fund or other scheme as the Board may require and, if after examining such particulars the Board is satisfied that such provident fund or other scheme will provide for an employee benefits more advantageous to him than the benefits which are provided for an employee by the Fund, the Board may declare such provident fund or other scheme to be an approved fund; and, if the Board so declare, contributions to the Fund shall, from a date to be fixed by the Board, cease to be payable both by the employees for whose benefit such approved fund is established and by the employer or employers of such employees in respect of such employees.

(3) Where, either by reason of the transfer of an employee to an employment in respect of which an approved fund exists or in the circumstances described in sub-section (2) of this section, contributions in respect of an employee cease to be payable to the Fund, the amount standing to the credit of such employee shall remain in the Fund to such employee's credit.

(4) Where an approved fund is wound up, or where an employee transfers from an employment in respect of which an approved fund exists to some other employment, the amount standing to each employee's credit, or to such employee's credit, in such approved fund that represents contributions to such approved fund since the date on which section 7 of this Ordinance comes into force and any interest thereon shall, notwithstanding anything to the contrary contained in any other written law, be transferred by the employer to the Fund, and the Postmaster-General shall credit each such employee, or such employee, with such amount, in such manner as the Board shall direct.

(5) An employer who has established an approved fund shall—

(a) furnish the Board with such accounts in respect of such approved fund duly certified by an accountant who has been approved under section 134 of the Companies Ordinance of the Straits Settlements as applicable throughout the Federation by virtue of the Companies Ordinance, 1946, as the Board may require;

(b) inform the Board of any proposed amendment to the rules of such approved fund and shall not effect any such amendment except with the written sanction of the Board;

(c) furnish the Postmaster-General with such particulars of those employees for whom such approved fund has been established as may be prescribed by the Board.

(6) The Board may, if not satisfied with the management of any approved fund, revoke any declaration made under sub-section (1) or sub-section (2) of this section, and upon such revocation, the amount of the contributions paid since the date on which section 7 of this Ordinance comes into force both by the employer and by these employees shall, notwithstanding anything to the contrary contained in any other written law, be transferred to the Fund in such manner, and the Postmaster-General shall credit each such employee with such part of such amount, as the Board may direct.

(7) An employer shall be subject to the same penalties in respect of any deductions or contributions under the rules of an approved fund as are provided by this Ordinance in respect of deductions and contributions relating to the Fund.

(8) Any employer who fails to comply with any requirement or direction of the Board under this section, or who effects an amendment to the rules of an approved fund without the sanction mentioned in paragraph (b) of sub-section (5) of this section, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand dollars.

(9) Where in the circumstances mentioned in sub-sections (4) and (6) of this section, any amount of contributions paid since the date on which section 7 of this Ordinance comes into force is transferred to the Fund, the employer and the employee concerned may, by mutual agreement elect to transfer to the Fund also such amount standing to the credit of the employee in an approved fund as represents the contributions paid to such fund before the date on which section 7 of this Ordinance comes into force. Notice of such elections shall be given to the Board in such manner as may be prescribed by the Board, and if the Board in such manner as may be prescribed by the Board, and if the Board approves such transfer, the Postmaster-General shall credit the employee with the amount so transferred to the Fund.

17. *Civil Proceedings to recover contributions.*—(1) All contributions payable under this Ordinance may, without prejudice to any other remedy, be recoverable by the Board summarily as a civil debt.

(2) Proceedings for the summary recovery as civil debts of any contribution may, notwithstanding anything in any written law to the contrary, be brought at any time, within three years from the date when the contribution becomes due.

(3) Proceedings for the summary recovery as civil debts of contributions may be instituted by any officer authorised in that behalf by special or general directions of the Chairman of the Board and any such officer may conduct such proceedings.

18. *Conduct of prosecutions and offences by bodies corporate.*—(1) Prosecutions in respect of any offence against the provisions of this Ordinance or of any regulations or rules made thereunder may be conducted by any officer authorised in writing in that behalf by the Chairman of the Board.

(2) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

19. *Appointment and powers of inspectors.*—(1) The High Commissioner may appoint such number of inspectors as he may consider necessary for the purposes of this Ordinance.

(2) The Commissioner for Labour and any Deputy Commissioner for Labour, Assistant Commissioner for Labour or Labour Officer may exercise any or all of the powers of an inspector.

(3) Subject to any regulations made under section 20 of this Ordinance, an inspector may at any reasonable time and within the local limits for which he is appointed—

(i) enter any premises or place where persons are believed to be engaged as employees ;

(ii) make such examination and enquiry as may be necessary for ascertaining whether the provisions of this Ordinance or of any regulations made under section 20, or of any rules made under section 21 of this Ordinance are being or have been complied with in any such premises or place ;

(iii) examine either alone or in the presence of any other person with respect to any matters under this Ordinance on which he may reasonably require information, every person, whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an employee, and require every such person to be examined ;

(iv) exercise such other powers as may be necessary for carrying this Ordinance into effect.

(4) Every inspector appointed under sub-section (1) of this section shall be deemed to be a public servant within the meaning of the Penal Code.

(5) Any person who obstructs any inspector or any of the officers mentioned in sub-section (2) of this section in the performance of his duties under this Ordinance shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars or to both such imprisonment and fine.

20. *Power of High Commissioner in Council to make regulations.*—The High Commissioner in Council may, after seeking the advice of the Board, make regulations—

(a) to provide for the manner of payment and collection of contributions and any matters incidental thereto ;

(b) to provide for the nomination by an employee of the persons to whom any amount standing to his credit in the Fund at the time of his death is to be paid at his death, for the manner in which such nomination may be revoked and for the circumstances in which it is to be treated as having ceased to be operative and for the payment of such amount to the nominee so nominated ;

(c) to provide that, subject to the regulations, probate or other proof of title of the personal representatives of a deceased employee may be dispensed with in the case of any amount standing to the credit of such employee in the Fund and that such amount may be paid or distributed to or among the persons appearing in the manner provided by the regulations to be beneficially entitled to the personal estate of the deceased employee, whether under any nomination as aforesaid or by law, or as next of kin or otherwise, or to or among any one or more of such persons exclusive of the others ;

(d) to provide that any amount not exceeding one thousand dollars standing to the credit of a deceased employee in the Fund may be paid out by the Board without production of any evidence that any estate duty due on the estate of the deceased employee has been paid ;

(e) to prescribe anything which under this Ordinance may be prescribed by the High Commissioner in Council ; and

(f) for carrying out the provisions of this Ordinance.

21. *Power of the Board to make rules.*—The Board may, in addition to the other duties imposed and powers conferred upon it under this Ordinance, make rules—

(a) to provide for—

(i) the return of contributions under this Ordinance, or any part of such contributions, paid in error ;

(ii) the payment of contributions under this Ordinance, or of any part of such contributions, omitted to be paid in error ;

(b) to provide for the keeping of books, accounts or records by employers ;

(c) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remain in the Fund ;

(d) to provide for the appointment of medical boards for the purpose of paragraph (c) of sub-section (i) of section 13 of this Ordinance and for such other purposes as may be prescribed ;

(e) to prescribe the procedure for the withdrawal of amounts from the Fund ;

(f) to prescribe the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of section 13 of this Ordinance ;

(g) to prescribe the procedure to be followed when contributions are deposited by the employer in the Fund ;

(h) to provide, in cases where an employee is employed concurrently by two or more employers, the extent of the obligation of such employers as to payment of contributions under this Ordinance ;

(i) to prescribe the returns to be made by employers, and the forms and registers to be used, in the carrying out of the provisions of this Ordinance ; and

(j) to prescribe anything which under this Ordinance may be prescribed by the Board.

22. *Power of High Commissioner in Council to amend the First Schedule.*—

(1) The High Commissioner in Council may, after seeking the advice of the Board, amend, by order, the First Schedule to this Ordinance.

(2) Any order made under this section shall be laid on the table of the Legislative Council, and shall not come into force until such date as may be specified in a resolution of the Legislative Council approving such order.

FIRST SCHEDULE.

(Section 2.)

1. Employment on any estate over twenty-five acres in extent.
2. Employment on any mine where ten or more employees are employed.
3. Employment in any premises—
 - (a) where ten or more employees are employed ; and
 - (b) in which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely :—
 - (i) the making of any article or of part of any article ; or
 - (ii) the altering, repairing, ornamenting, finishing or cleaning of any article ; or
 - (iii) the adapting for sale of any article.
4. Employment by any person engaged in the business of transporting of passengers or goods by road and by whom ten or more employees are employed.
5. Employment by any person engaged in the business of loading, unloading or storing of goods and by whom ten or more employees are employed.
6. Employment in any shop, restaurant or theatre, as these words are defined in the Weekly Holidays Ordinance, 1950,* where five or more employees are employed.
7. Employment in any office in which five or more employees are employed.
8. Employment in any school as a registered teacher.
9. Employment with the Government of the Federation or of the any State or Settlement, or with any municipality or Harbour Board or with the Central Electricity Board.

SECOND SCHEDULE.

(Section 7.)

Amount of wages for the month.				Rate of contribution for the month.	
				By the employee.	By the employer.
When the wages do not exceed	\$ 10	..	..	<i>Nil.</i>	<i>Nil.</i>
When the wages exceed	\$ 10 but not \$ 30	..	..	1·50	1·50
When the wages exceed	\$ 30 but not \$ 40	..	..	2·00	2·00
When the wages exceed	\$ 40 but not \$ 50	..	..	3·00	3·00
When the wages exceed	\$ 50 but not \$ 60	..	..	3·50	3·50
When the wages exceed	\$ 60 but not \$ 70	..	..	4·00	4·00
When the wages exceed	\$ 70 but not \$ 80	..	..	4·50	4·50
When the wages exceed	\$ 80 but not \$ 90	..	..	5·00	5·00
When the wages exceed	\$ 90 but not \$ 100	..	..	5·50	5·50
When wages the exceed	\$ 100 but not \$ 120	..	..	6·00	6·00

*Legislative Series, 1950 (Mal. 1).

SECOND SCHEDULE—*contd.*

Amount of wages for the month.			Rate of contribution for the month.	
			By the employee.	By the employer.
When the wages exceed	\$ 120 but not \$ 140	..	7·00	7·00
When the wages exceed	\$ 140 but not \$ 160	..	8·00	8·00
When the wages exceed	\$ 160 but not \$ 180	..	9·00	9·00
When the wages exceed	\$ 180 but not \$ 200	..	10·00	10·00
When the wages exceed	\$ 200 but not \$ 220	..	11·00	11·00
When the wages exceed	\$ 220 but not \$ 240	..	12·00	12·00
When the wages exceed	\$ 240 but not \$ 260	..	13·00	13·00
When the wages exceed	\$ 260 but not \$ 280	..	14·00	14·00
When the wages exceed	\$ 280 but not \$ 300	..	15·00	15·00
When the wages exceed	\$ 300 but not \$ 320	..	16·00	16·00
When the wages exceed	\$ 320 but not \$ 340	..	17·00	17·00
When the wages exceed	\$ 340 but not \$ 360	..	18·00	18·00
When the wages exceed	\$ 360 but not \$ 380	..	19·00	19·00
When the wages exceed	\$ 380 but not \$ 400	..	20·00	20·00

APPENDIX "F" (f)

SINGAPORE CENTRAL PROVIDENT FUND ORDINANCE, 1953.

Summary of Legislation

The management of the fund is placed in the hands of a Central Provident Fund Board which consists of a chairman, two persons holding office under the Government, two persons representing employers and two persons representing employees. Appointments to the Board are made by the Governor, the chairman holding office at his pleasure. Other members are appointed for a maximum period of three years. The Board is a corporate body and has power to engage its own staff.

Every person who is an "employee" is liable to contribute to the fund. An "employee" means any person who has entered into a contract of service or apprenticeship and who has worked in Singapore for the same employer continuously for the preceding three months. An "employer" means the person with whom an employee has entered into a contract of service or apprenticeship, any body or person, whether or not statutory or incorporated, and the Government unless specifically exempted by notification.

The following classes of persons are excluded from the provisions of the scheme: Government employees who are in pensionable or probationary employment; temporary employees on contracts specifically providing gratuities or re-employed persons; pupils, students and the like; housemen; and part time employees. An individual employee may also be exempted

by the Board if he is in receipt of wages at a rate exceeding \$ 500 per month, is not domiciled in Singapore or the Federation of Malaya, and will be entitled on retirement to benefits which in the opinion of the Board are adequate. The Minister for Labour and Welfare may also by order exempt any person or class of persons from all or any of the provisions of the Ordinance. Finally, the Board has power to exempt all employees of an employer who, in its opinion, is operating a provident fund for the benefit of his employees providing benefits analogous to those provided under the scheme.

Monthly contribution rates are as follows :—

Monthly Wages.			Contributions.	
			Employee.	Employer.
\$10 or less	..	Nil.	..	Nil.
\$10—200	..	Nil.	..	5 per cent. of employee's wages.
\$200—210·50	..	Difference between \$200 and employee's wages.	5 per cent.	5 per cent. of employee's wages.
\$210·50—500	..	5 per cent. of employee's wages.	5 per cent.	5 per cent. of employee's wages.
Over \$500	..	\$25	..	\$25

Interest (except in the first year after the fund was started) is to be added to employee accounts at a rate of not less than $2\frac{1}{2}$ per cent. per annum.

A contributor can withdraw his money from the fund when he reaches 55 years of age. He can continue to be a member of the fund after that age, however, and if so his employer is bound to continue his contributions as long as the employee remains a member of the fund. Six months' notice of intention to withdraw from the fund may be required if a contributor continues his membership after he has attained 55 years of age. A contributor can withdraw from the fund before reaching 55 years of age only in the following circumstances : if physically incapacitated from ever continuing in any employment or if of unsound mind ; if leaving Malaya with no intention of returning ; or if he has ceased to be an employee for two years and is not likely to become one again. If a contributor dies before reaching the age of 55, all money standing to the credit of his account will be paid to his dependents or trustees. No contributor can get an advance from the fund before the time comes to withdraw, nor can the amount with the fund be assigned to another person or attached for debt.

The Ordinance provides for protection of an employee's interest in an approved fund if he leaves the employment of an employer maintaining such a fund. The employer is bound in this case to pay over to the central fund a sum not less than that to which the employee would have been entitled had he been a member of the central fund. The Board has power to appoint inspectors and to inspect employers' records to ensure that the provisions of the Ordinance are being carried out.

APPENDIX "F" (g)

THE COMMONWEALTH OF AUSTRALIA.

SUPERANNUATION ACT, 1922—1952.

An Act to provide superannuation benefits for persons employed by the Commonwealth and to make provision for the families of those persons.

BE it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows :—

PART IV-B.

THE PROVIDENT ACCOUNT.

Heading
inserted by
No. 28,
1937, S. 8.
The Provi-
dent Account
Inserted by
No. 28, 1937,
S. 8.

60U. There shall be a Provident Account which shall form part of the Superannuation Fund and into which shall be paid all contributions of employees and payments by the Commonwealth under this part and from which shall be paid the benefits provided for in this Part.

Contributor
to Provident
Account.
Inserted by
No. 28, 1937,
S. 8.

60V. The following persons shall be contributors to the Provident Account :—

(a) all persons appointed, whether before or after the commencement of this section, under sub-section (8) of section eighty-four of the Commonwealth Public Service Act, 1922 (or of that Act as since amended) whose appointments have been confirmed and who are not contributors to the Superannuation Fund ;

(b) all persons who become employees after the commencement of this Part who are not contributors to the Superannuation Fund in consequence of their having failed to be certified by a qualified medical practitioner as prescribed by section four B of this Act ; and

(c) all employees who elect under section sixty X of this Act to contribute to the Provident Account.

Contributions
to Provident
Account.
Inserted by
No. 28, 1937,
S. 8 ;
Substituted
by No. 49,
1951, S. 16,

60W.* (1) The contributions of a contributor to the Provident Account—

(a) shall be at the rate of one shilling for each pound or part of a pound of each fortnightly payment of salary payable to him ; and

(b) shall be deducted from his salary at each payment of salary.

*This section was substituted by sub-section (1) of section 16 of the Superannuation Act, 1951. Sub-section (2) of that section reads as follows :—

"(2) Contributions to the Provident Account shall be made in accordance with the Principal Act as amended by the last preceding sub-section as from the first day of November, one thousand nine hundred and fifty-one."

(2) A contributor to the Provident Account shall contribute to that Accounts as from the date from which he would have been required, under section twelve of this Act, to contribute to the Superannuation Fund if he had become a contributor to that Fund.

(3) Where the salary of a contributor to the Provident Account is increased, contributions payable by him shall be payable as from the date from which the increased salary payable or, if that date is not a pay-day, as from the next succeeding pay-day after that date.

(4) Where a contributor to the Provident Account is on leave of absence on the ground of illness, either without pay or at less than full pay, he is liable to pay the contributions which he would have been liable to pay if he had not been absent, but the Board may, upon his application, permit him to pay those contributions in such smaller sums and during such periods as the Board approves.

(5) Where a contributor to the Provident Account is on leave of absence without pay on a ground other than the ground of illness, that contributor shall not make a contribution in respect of a fortnightly pay day occurring during the period of that leave.

(6) The fortnightly salary of a contributor to the Provident Account who is paid salary in respect of periods other than a fortnight shall, for the purposes of this section, be ascertained as prescribed.

60X. (1) Any contributor to the Superannuation Fund or any employee who would, but for this section, be required to become a contributor to the Superannuation Fund, whose contributions for his first two units—

(a) are or would be at a rate in excess of the rate prescribed for the age of forty-five years based on a retiring age of sixty-five years; and

(b) exceed, or would exceed, an amount equal to five per centum of his salary,

may within six months after the date of commencement of this section, or of the commencement of his employment, whichever is the later, elect to contribute to either the Superannuation Fund or the Provident Account.

Election to contribute to Provident Account.
Inserted by No. 28, 1937, S. 8. Sub-section (1) amended by No. 53, 1942, S. 35.

Amended by No. 53, 1942, S. 35. (2) Where a contributor to the Superannuation Fund elects in pursuance of the last preceding sub-section to contribute to the Provident Account—

(a) he shall, as from the date on which he so elects, make no further contributions to the Superannuation Fund and shall cease to be entitled to any pension or benefit which would otherwise be payable from the Superannuation Fund ; and

(b) the Board shall make adjustment of contributions as, in its opinion, is necessary, by reason of the election of the contributor to contribute to the Provident Account.

Payments on retirement.
Inserted by No. 28, 1937, S. 8 : Substituted by No. 76, 1950, S. 8. Sub-section (1) amended by No. 49, 1951, S. 17.

60Y. (1) Subject to this Act, where a contributor to the Provident Account retires or is retired on or after having attained the age of sixty years or where his services are terminated—

(a) on the ground of invalidity ; or

(b) owing to retrenchment,

there shall be paid to him a sum equal to two and two-thirds times the following amount, namely, the aggregate of his contributions to the Provident Account, together with compound interest on those contributions at the rate of three pound per centum per annum.

Substituted by No. 49, 1951, S. 17.

(2) Where the sum payable under the last preceding sub-section is less than one-half of the annual rate of salary payable to a contributor to the Provident Account at the date of his retirement, the sum payable to the contributor to the Provident Account shall be a sum equal to one half of the annual rate of salary payable to him at that date.

Sub-section (3) omitted by No. 49, 1951, S. 17.

* * * * *

Amended by No. 49, 1951, S. 17.

(4) Sub-section (2) of this section does not apply in relation to a person who has become or becomes a contributor to the Provident Account after the commencement of the Superannuation Act, 1946 and retires or is retired on or after reaching the age of sixty years.

Amended by S. 49, 1951, S. 17.

(5) Where a contributor to the Provident Account has been paid a sum under sub-section (2) of this section and he again becomes a contributor to the Provident Account, that sub-section shall not apply to any subsequent payment to which he becomes entitled under this section.

60Z. (1) On the death of a male contributor to the Provident Account before retirement, there shall be paid to his widow a sum equal to two and two-thirds times the following amount, namely, the aggregate of his contributions to the Provident Account together with compound interest on those contributions at the rate of three pounds per centum per annum.

* * * * *

(3) Where the sum payable under sub-section (1) of this section is less than one-half the annual rate of salary payable to the contributor to the Provident Account at the date of his death, the sum payable to his widow shall be a sum equal to one-half of that annual rate of salary.

(4) Where a male contributor to the Provident Account is not survived by a widow but is survived by children under the age of sixteen years, the sums payable under this section shall be divided equally amongst those children.

60AA. On the death of a contributor to the Provident Account who is unmarried or is a widower without children under the age of sixteen years, there shall be paid to his personal representatives or, failing them to such persons (if any) as the Board determines an amount equal to the contributions paid by him to the Provident Account together with compound interest thereon at the rate of three pounds per centum per annum.

60AB. Where a contributor to the Provident Account resigns or is discharged or is dismissed there shall be paid to him an amount equal to the contributions paid by him to the Provident Account together with compound interest thereon at the rate of three pounds per centum per annum.

60ABA. †Where an employee who is a contributor resigns from his employment and, immediately after the date of his resignation, becomes employed by the Commonwealth or an approved authority otherwise than as a casual, exempt or temporary employee, he shall, for the purposes of this Act, be deemed not have resigned.

†This section was inserted by sub-section (1) of section 19 of the Superannuation Act, 1951. Sub-section (2) of that section reads as follows :—

“(2) Where, on or after the first day of July, one thousand nine hundred and fifty, a contributor to whom section 60 ABA of the Superannuation Act, 1922-1951 would have applied if that section had come into operation on that date has received payment of an amount in accordance with section 60 AB of the Superannuation 1922-1948 or the Superannuation Act, 1922-1950, that contribution may, within three months after the commencement of this Act or within such further time as the Board allows, repay to the Board an amount equal to the amount so paid to him and upon the payment of that amount he shall be deemed not to have resigned for the purposes of this Act.”

Payments on death of contributor with dependants. Inserted by No. 28, 1937 S. 8. Substituted by No. 76, 1950, S. 8. Sub-section (1) amended by No. 49, 1951, S. 18. Sub-section (2) omitted by No. 49, 1951, S. 18. Sub-section (3) amended by No. 49, 1951, S. 18.

Payment on death of contributor without dependants. Inserted by No. 28, 1937 S. 8.

Payment on resignation or dismissal. Inserted by No. 28, 1937 S. 8.

Certain contributors who change the nature of their employment deemed not to have resigned. Inserted by No. 49, 1951, S. 19.

Retrenchment or discharge.
Inserted by
No. 28, 1937,
S. 8.

60AC. The compulsory termination of the service of a contributor to the Provident Account for the reason that his service position is not necessary, or for the reason that the work in which he was engaged is finished or for the reason that the quantity of work has diminished and has rendered necessary a reduction in the number of employees—

(a) shall be deemed to be “ retrenchment ” if he has had not less than ten years’ service ; and

(b) shall be deemed to be “ discharge ” if he has had less than ten years’ service.

Payment to other person.
Inserted by
No. 28, 1937,
S. 8.

60AD. Where in the opinion of the Board any payment under this part should be made to a person other than the person specified, the Board may, subject to this Act, authorise payment to that other person accordingly.

Payments by Commonwealth.
Inserted by
No. 28, 1937,
S. 8.
Sub-section (1) amended by No. 35, 1947, S. 22.
No. 67, 1950, S. 9 and
No. 49, 1951, S. 20.
Substituted by No. 49, 1951, S. 20.

60AE. (1) In respect of each payment made to a contribution to the Provident Account or to his widow or children in pursual of sub-section (1) of section 60Y or sub-section (1) of section 60Z of this Act, the Commonwealth shall pay to the Provident Account an amount equal to five eighths of that payment.

(2) The Commonwealth shall pay to the Provident Account an equal to the amount by which the sum paid to, or in respect of a contributor to the Provident Account under sub-section (2) of section 60Y, or sub-section (3) of section 60Z, as the case may be, of this Act exceeds the sum which would but for the operation of whichever of these sub-sections is applicable, has been payable to, or in respect of, that contributor under sub-section (1) of section 60Y, or sub-section (1) of section 60Z of this Act.

(3) Payments by the Commonwealth to the Provident Account for the purposes of this Act shall be made from the Consolidate Revenue Fund which is hereby appropriated accordingly.

(4) The payments shall be made in such manner and at such periods as are prescribed.

APPENDIX "F" (h)

EMPLOYEES' PROVIDENT FUND ACT, No. 15 OF 1958.

An Act to establish a Provident Fund for the benefit of certain classes of employees and to provide for matters connected therewith or incidental thereto.

(Date of Assent : May 9, 1958).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Employees' Provident Fund Act, No. 15 of 1958, and shall come into operation on such date (hereinafter in this Act referred to as the appointed date) as the Minister may appoint by Order published in the Gazette. Short title and date of operation.

PART I.

ESTABLISHMENT AND MEMBERSHIP OF THE EMPLOYEES' PROVIDENT FUND AND ADMINISTRATION OF THIS ACT, AND OF SUCH FUND.

2. For the purposes of this Act there shall be established a fund called the Employees' Provident Fund (hereinafter in this Act referred to as the Fund). Establishment of Employees' Provident Fund.

3. (1) Where an employee first becomes liable under Section 10 to pay contributions to the Fund, he shall then become a member of the Fund and continue to be a member of the Fund so long as there is any sum to the credit of his individual account in the Fund. Membership of the Fund.

(2) Neither a member of the Fund nor any person claiming under him shall have any interest in, or claim to, the moneys of the Fund otherwise than by virtue of any provision of this Act or of any regulation.

4. (1) Except as otherwise provided in this Act, the Commissioner of Labour shall be in charge of the general administration of this Act. Administration of this Act.

(2) Subject to any general or special directions of the Commissioner of Labour, any Deputy Commissioner of Labour or any Assistant Commissioner of Labour may exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

(3) There may be pointed such number of officers as may be required for the purpose of carrying out or giving effect to the provisions of this Act.

(4) The Commissioner of Labour may either generally or specially authorise any officer pointed under sub-section (3) of this section to exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

Powers and
duties of
the Monetary
Board in
relation to
the Fund.

5. The Monetary Board—

(a) may appoint such officers and servants as may be required by the Board for exercising its powers, performing its duties and discharging its functions under this Act, fix the salaries and wages of such officers and servants and determine their conditions of service ;

(b) shall receive all sums paid under this Act as contributions and surcharges and the income from the investment of moneys of the Fund and shall credit such sums and income to the fund ;

(c) shall have custody of the moneys of the Fund ;

(d) shall pay to the persons certified by the Commissioner the benefits to which those persons are entitled under this Act ;

(e) may invest such of the moneys, of the Fund as are not immediately required for the purposes of this Act in such securities as the Board may consider fit and may sell such securities ;

(f) shall maintain a general account in respect of the Fund, and a separate account (in this Act referred to as an individual account) in respect of each member of the Fund ;

(g) shall cause the books of accounts relating to the Fund to be balanced as on the thirty-first day of December in each year ;

(h) shall cause to be prepared in respect of the Fund for each year a statement of receipts and payments a statement of income and expenditure, a statement of assets and liabilities, and a statement of investments showing the face value, purchase price and market value of each of the investments ;

(i) shall transmit to the Minister a copy of each of the statements prepared under the preceding paragraph (h) for each year within three months after the thirty-first day of December of that year ;

(j) shall notify each member of the Fund, within three months after the thirty-first day of December in each year, the amount lying to the credit of his individual account on that day ;

(k) shall deduct from the income from the investment of moneys of the Fund the expenses incurred by the Board and the Commissioner in carrying out the provisions of this Act ; and

(l) shall have such other powers and duties in connection with the Fund as may be conferred or imposed on such Board by Order published in the Gazette, by the Minister with the concurrence of the Minister of Finance.

6. (1) The accounts of the Fund in respect of each year shall be audited by the Auditor-General and the cost of the audit shall be paid to him out of the Fund. All payments made to him under this sub-section shall be credited to the Consolidated Fund of Ceylon. Auditor-General to audit the accounts of the Fund, etc.

(2) The Auditor-General or any officer of his department authorised by him to audit the accounts of the Fund shall have access to all such books and documents as the Auditor-General or such officer may consider necessary for the purposes of the audit of such accounts, and shall be furnished by the Monetary Board and the Commissioner with such information within their knowledge or ascertainable by them as may be required for such purposes.

(3) The Auditor-General shall examine the accounts of the Fund and submit to the Minister annually a report—

(a) stating whether he has or has not obtained all the information required by him,

(b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the Fund, and

(c) drawing attention to any item in such accounts which in his opinion may be of interest to the Senate and the House of Representatives in any examination of such accounts.

Such report shall not disclose the name of any member of the Fund.

(4) The Minister shall lay before the Senate and the House of Representatives a copy of the Auditor-General's report submitted to the Minister under sub-section (3) of this section and copies of the statements transmitted to the Minister by the Monetary Board under paragraph (i) of section 5.

7. (1) There shall be paid out of the Consolidated Fund of Ceylon to the Monetary Board such sums as may be determined by resolution of the House of Representatives for defraying— Advances of the Monetary Board by the Government.

(a) all expenditure, including capital expenditure, incurred by such Board and the Commissioner in carrying out the provisions of this Act during the period of twelve months commencing on the date of enactment of this Act ; and

(b) all capital expenditure incurred by such Board and the Commissioner in carrying out the provisions of this Act during the period of twenty-four months commencing on the day immediately succeeding the date of the termination of the period referred to in paragraph (a) of this sub-section.

(2) Every sum paid out of the Consolidated Fund of Ceylon under sub-section (1) of this section shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister of Finance.

PART II.

COVERED EMPLOYMENTS, EMPLOYEES TO WHOM THIS ACT APPLIES, AND CONTRIBUTIONS.

Covered
employments
and employ-
ees to whom
this Act
applies.

8. (1) Any employment, including any employment in the service of a corporation whose capital or a part of whose capital is provided by the Government, may by regulation be declared to be a covered employment.

(2) Regulations may be made—

(a) to treat as a covered employment any employment outside Ceylon which is for the purposes of a trade or business carried on in Ceylon and which would be a covered employment if it were in Ceylon ; and

(b) to treat as not being a covered employment to disregard—

(i) employment under a person who employs less than a prescribed minimum number of employees ;

(ii) employment which is usually performed by the day or by the job or by the journey ; and

(iii) employment of a person in the service or for the purpose of the trade or business, or as a partner, of that person's spouse.

(3) Subject to the other provisions of this Act every person over a prescribed age who is employed by any other person in any covered employment shall be an employee to whom this Act applies. For the purposes of this sub-section different ages may be prescribed for different covered employments.

(4) Any regulation declaring any employment to be a covered employment may provide that such persons only as earn less than a prescribed amount in that employment or as are of a prescribed class or description, and not other persons in that employment, shall be employees to whom this Act applies.

9. Where the immediate employer of any person is himself in the employment of some other person, and the first mentioned person is employed to do any work in the course of and for the purposes of the business of that other person, that other person shall for the purposes of this Act, be deemed to be the employer of the first mentioned person jointly with the immediate employer.

Immediate employer being himself in the employment of other person.

10. (1) Subject to the provisions of sub-section (3) of this section and of section 27, an employee to whom this Act applies shall, in respect of each month during which he works in a covered employment, be liable to pay to the Fund a contribution of an amount equal to four per centum of his total earnings from that employment during that month:

Normal contributions.

Provided that no employee who has attained the age of fifty-five years in the case of a male or fifty years in the case of a female at the time when he or she first becomes an employee to whom this Act applies shall be liable to pay such contribution to the Fund.

(2) Subject to the provisions of sub-section (3) of this section and of section 27, the employer of every employee to whom this Act applies and who is liable to pay contributions to the Fund shall, in respect of each month during which such employee is in a covered employment under such employer, be liable to pay to the Fund before the last day of the succeeding month, a contribution of an amount equal to six per centum of such employee's total earnings from that employment during that month.

(3) The liability of an employee in a covered employment and his employer to pay contributions under this section shall commence on the day immediately after the date fixed in relation to such employment by the Minister by Order published in the Gazette. Different dates may be fixed under this sub-section for different classes of employees in the same covered employment.

11. (1) An employee to whom this Act applies and his employer may elect, by notice sent to the Commissioner in the prescribed form and manner, to pay, after the date specified in the notice as the date on which the election shall take effect, contributions calculated at such percentages higher than those specified in section 10 as are specified in the notice.

Right of employees and employers to elect to pay contributions calculated at higher percentages, and liability of employees and employers who make such election,

(2) Where an employee and his employer make an election by notice under sub-section (1) of this section, such election shall be irrevocable after the date on which the election takes effect, and they shall, after that date, be liable to pay as their contributions under this Act amounts calculated at the percentages specified in that notice.

Commissioner's direction to employer who has reduced the earnings of any employee for the purpose of reducing the amount of the employer's contributions under this Act in respect of the employee.

12. (1) Where the Commissioner is satisfied that the employer of any employee has, during the period of one year immediately before the appointed date or at any time on or after that date reduced the earnings of such employee for the purpose of reducing the amount of such contributions, the Commissioner shall, by written notice, direct such employer to pay to the Fund in such instalments and before such dates as may be specified in that notice, in respect of the entire period during which such employee receives such reduced earnings, the difference between the sum he should have paid during that period as contributions had such contributions been calculated on the basis of the earnings of such employee before the reduction and the sum actually paid by him as contributions during that period.

(2) Where the Commissioner gives any employer a direction under sub-section (1) of this section, such employer shall comply with that direction.

When fraction of a cent is to be ignored, or is to be reckoned as one cent, in computing the amount of a contribution.

13. Where the amount of a contribution payable under this Act involves the fraction of a cent, then—

(a) if such fraction is less than one-half of a cent, such fraction shall not be taken into account; and

(b) if such fraction amounts to or exceeds one-half of a cent, such fraction shall be reckoned as one cent.

Interest on contributions, etc.

14. (1) Interest at such rate, not less than two and a half per centum per annum, as may from time to time be fixed by the Monetary Board with the concurrence of the Minister and the Minister of Finance shall be paid for each year, out of the income from the investment of the moneys of the Fund, on the amount standing to the credit of the individual account of each member of the Fund as at the thirty-first day of December in that year:

Provided that—

(a) No such interest shall be paid on the contributions paid under this Act by or in respect of an employee for the year in which the employee first became liable to pay contributions;

(b) the rate of such interest shall not exceed two and a half per centum per annum unless the assets of the Fund, valued at the market value, exceed the liabilities of the Fund by ten per centum;

(c) for the period commencing on January 1 of the calendar year in which any sum is paid as a benefit under this Act to or in respect of a member of the Fund and ending on the date of payment of that sum, interest at the rate of two and a half per centum per annum shall be paid on the amount to the credit of the individual account of that member at the date of termination of that period; and

(d) Where any sum is credited under section 27 by the Monetary Board to the individual account of a member of the Fund on any date after the thirtieth day of June in any year, no such interest shall be paid on that sum for the period commencing on that date and ending on the thirty-first day of December of that year.

(2) Where the income from the investment of the moneys of the Fund is inadequate to pay any part of the interest payable on contributions paid to the Fund under this Act, the amount of the deficit shall be met out of moneys provided by Parliament for the purpose.

(3) Any sum provided by Parliament under sub-section (2) of this section shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister of Finance.

15. The employer of an employee to whom this Act applies shall deduct and pay to the Fund the contribution for each month of such employee under this Act before the last day of the succeeding month from the earnings of such employee; and a contribution paid under this section to the Fund by such employer on behalf of such employee shall be deemed to have been paid to the Fund by such employee. Payment of contribution due from employees.

16. Where contributions payable under this Act in respect of any month have not been paid to the Fund before the last day of the succeeding month and the employer is unable to explain to the satisfaction of the Commissioner that the failure to pay such contributions was due to circumstances beyond his control, he shall be liable to pay to the Fund, within thirty days after that day, in addition to the amount of the contribution due, a surcharge of ten per centum of such amount. Imposition of surcharge on employer on failure to pay contribution on due date.

17. (1) Any moneys due to the Fund shall be recoverable as a debt due to the Crown, by an action in which proceedings may be taken by way of summary procedure. The provisions of the Civil Procedure Code relating to actions of which the procedure is summary shall apply to an action under this section, and, for the purposes only of the application of such provisions to such action, section 8 of that Code shall have effect as if, for the words "by this Ordinance" occurring in that section, there were substituted the words "by this Ordinance or by any other written law." Recovery of contribution Cap. 86.

(2) Proceedings for the recovery of any moneys due to the Fund may be instituted by the Commissioner or any officer authorised, in that behalf by him, and the Commissioner or such officer may notwithstanding anything to the contrary in any other written law, conduct such proceedings.

(3) The provisions of the Prescription Ordinance shall not apply to the recovery of any sums payable as contributions or surcharges under this Act.

The sums to be credited to the individual accounts of members.

18. The contributions of a member of the Fund and of his employer in respect of him and the interest on such contributions shall be credited by the Monetary Board to the individual account of such member.

Employer prohibited from reducing earnings of his employees, etc.

19. No employer shall, by reason of his liability to pay in respect of any employee any contribution or surcharge under this Act, reduce the earnings of that employee or alter to his detriment any benefits which he is entitled to under the provisions of any other written law or under his contract of employment with that employer.

Employer prohibited from deducting from earnings of employee payments due from employer under this Act in respect of employee.

20. The employer of any employee shall not deduct from the earnings of that employee any sum which that employer is liable to pay as a contribution or surcharge under this Act, and any contract entered into by that employer with that employee whereby any part of the liability of that employer under this Act is transferred to that employee shall be *null and void*.

Amount due under this Act from an employer to be the first charge on his assets.

21. Any sum due under this Act from an employer on the day immediately following the end of the period within which that sum is required by this Act to be paid by him shall be the first charge on his assets notwithstanding anything to the contrary in any other written law.

Money to the credit of individual accounts to be inalienable Cap. 82.

22. Every assignment of, or charge on, any sum to the credit of the individual account of a member of the Fund and every agreement to assign or charge any such sum shall be *void*, and, where that member is adjudged insolvent by a competent court, any such sum shall not pass to any assignee acting on behalf of that member's creditors notwithstanding the provisions of the Insolvency Ordinance.

PART III.

BENEFITS.

Time at which benefits will be paid.

23. A member of the Fund shall be paid the total amount lying to the credit of such member's individual account as soon as may be practicable—

(a) After such member, being a male, attains the age of fifty-five years, or, being a female, attains, the age of fifty years, or

(b) after such member, being a female, ceases to be employed in consequence of marriage, or

(c) after such member ceases to be employed by work reason of a permanent and total incapacity for work and is certified by a registered medical practitioner to be unfit for work any longer for that reason, or

(d) before the date of such member's departure from Ceylon if such member declares in writing that such departure is with the intention of not returning to Ceylon :

Provided that, where a member of the Fund, being a male, continues to work in a covered employment after he has attained the age of fifty-five years, or, being a female, continues to work in a covered employment after she attained the age of fifty years, such member shall not be entitled to the payment under the proceeding provisions of this section until such member ceases to be in such employment.

In this section, "registered medical practitioner" means a Cap. 90. medical practitioner registered under the Medical Ordinance.

24. Where a member of the Fund dies before becoming entitled to the amount standing to his credit in his individual account or where he dies after becoming entitled thereto but before receiving such amount or where no nominee has been appointed under regulations made under this Act to whom such amount should be paid in the event of the death of such member or where one nominee has been appointed and he is dead or where more than one nominee is appointed and any one of them is dead, then such amount shall—

Persons to whom benefits shall be paid in certain circumstances.

(a) if it is not less than two thousand five hundred rupees, be paid to the executor of the last will or the administrator of the estate of such deceased member to be include in that estate ; and

(b) if it is less than two thousand five hundred rupees, be paid to the person who is, or be apportioned by the Monetary Board among the persons who are certified by the Commissioner to be in his opinion entitled by law to such amount.

25. Any sum to which a person is entitled under Section 23 or section 24 or to which a nominee appointed by a member of the Fund under regulations made under this Act is entitled upon the death of such member is referred to in this Act as a benefit.

Definition of "benefit".

26. It shall be a condition of any person's right to a benefit under this Act that he or any person on his behalf makes a claim thereto in the prescribed manner.

Claim to benefit.

PART IV.

APPROVED PROVIDENT FUNDS AND APPROVED CONTRIBUTORY PENSIONS SCHEMES.

Approved
provident
funds and
approved
contributory
pension.
schemes.

27. (1) Where a provident fund or a contributory pension scheme has been established before the appointed date for the benefit of any employees in a covered employment, the administrators of such fund or scheme shall, within three months after the declaration of that employment, as a covered employment by regulation made under this Act, furnish the Commissioner with the prescribed particulars relating to such fund or scheme, and, if the Commissioner, after examining such particulars and making such investigations as he may deem necessary, is of the opinion that such fund or scheme satisfies the prescribed requirements and that it is expedient that such fund or scheme should be declared to be an approved provident fund or an approved contributory pension scheme ; and, if he so declares, no contributions shall, with effect from the date fixed in relation to such fund or scheme, be payable to the Fund by such employees and the employer of such employees.

(2) The employer in a covered employment who proposes to establish, after the appointed date, a provident fund for the employees in such employment shall furnish the Commissioner with the prescribed particulars relating to the proposed provident fund, and, if after examining such particulars and making such investigations as he may deem necessary, the Commissioner is of opinion that the proposed provident fund satisfies the prescribed requirements and that it is expedient that such fund should be declared to be an approved provident fund, the Commissioner shall declare the proposed provident fund to be an approved provident fund ; and if he so declares and the provident fund is established, contributions to the Employees' Provident Fund shall, with effect from the date fixed in relation to such approved provident fund by the Commissioner, cease to be payable by such employees and such employer.

(3) No rules or regulations governing an approved provident fund or an approved contributory pension scheme shall be altered except with the written sanction of the Commissioner, and, where there is a contravention of the provisions of this subsection, the administrators of such fund or scheme shall be deemed to have committed such contravention.

(4) Every employer and employee who are liable to contribute to an approved provident fund or an approved contributory pension scheme under the rules or regulations in force for that fund or scheme shall comply with such of those rules or regulations as are applicable to them.

(5) Where, either by reason of the fact that an employee liable to pay contributions under this Act to the Employees' Provident Fund takes up an employment in respect of which an approved provident fund or an approved contributory pension scheme exists or in the circumstances specified in sub-section (2) of this section, contributions in respect of an employee cease to be payable to the Employees' Provident Fund, the amount standing to the credit of his individual account in the Employees' Provident Fund shall be retained in that account to be disposed of in accordance with the provisions of Part III of this Act.

(6) Where an approved provident fund is wound up, the administrators or liquidators of that approved provident fund shall transfer to the Employees' Provident Fund all such contributions and interest thereon as have been paid to that approved provident fund.

(7) Where an employee who is a contributor to an approved provident fund leaves the employment by virtue, of which he has been such contributor, takes up a covered employment thereafter in respect of which he is not liable to contribute to any other approved provident fund and notifies to the Commissioner in writing the assumption of duties in such covered employment, the Commissioner shall in writing direct the administrators of the first-mentioned approved provident fund to transfer to the Employees' Provident Fund all such contributions and interest thereon as have been paid in respect of that employee to the first mentioned approved provident fund.

(8) Where the administrators of a provident fund or contributory pension scheme preferred to in sub-section (1) of this section fail to comply with the provisions of that sub-section or where such fund or scheme is not declared by the Commissioner to be an approved provident fund or an approved contributory pension scheme, such administrators shall transfer to the Fund all such contributions and interest thereon as have been paid in respect of employees to the first mentioned provident fund or pension scheme.

(9) The Monetary Board—

(a) shall, where a sum from an approved provident fund is transferred under sub-section (6) of this section to the Employees' Provident Fund, open an individual account in the Employees' Provident Fund for each of the employees who were contributors to that approved provident fund at the time of such transfer, and shall credit to the individual account of each such employee in the Employees' Provident Fund such part of the sum transferred to the Employees' Provident Fund as was to the credit of his account in that approved provident fund, and

(b) shall, open an individual account in the Employees' Provident Fund for every employee in respect of whom any sum is transferred under sub-section (7) of sub-section (8) of this section to the Employees' Provident Fund and shall credit that sum to that individual account.

(10) Where the Commissioner is dissatisfied with the management of any approved provident fund or approved contributory pension scheme, he may revoke the declaration made under sub-section (1) or sub-section (2) of this section in respect of that fund or scheme, and, if such declaration is revoked, he shall in writing—

(a) communicate the revocation to the administrators or that fund or scheme ; and

(b) direct those administrators to transfer to the Employees' Provident Fund all such contributions and interest thereon as have been paid to that fund or scheme ;

and those administrators shall comply with the Commissioner's direction.

(11) The Monetary Board shall, where the administrators of an approved provident fund or approved contributory pension scheme have complied with a direction issued by the Commissioner under sub-section (10) of this section, open an individual account in the Employees' Provident Fund for each employee who was a contributor to that approved provident fund or approved contributory pension scheme when such administrators complied with such direction, and shall credit to that individual account such part of the sum transferred from that approved provident fund or approved contributory pension scheme to the Employees' Provident Fund in compliance with the Commissioner's direction as was to the credit of that employee's account in that approved provident fund or approved contributory pension scheme.

PART V.

DETERMINATION OF CLAIMS.

Commissioner or an officer authorised by the Commissioner to determine claims.

28. All claims to benefits shall be determined by the Commissioner or by any officer authorised in that behalf by him and the determination of the Commissioner or such officer shall, subject to any decision on an appeal made against such determination in accordance with the provisions of this Act, be final :

Provided that any determination made by any officer under this section may within the prescribed period be reviewed by the Commissioner on his own motion ; and in such case the determination of the Commissioner shall be deemed, for the purposes of section 29, to be the determination in that case.

29. (1) Any person aggrieved by any determination made **Appeals.** under Section 28 may appeal from such determination to a Tribunal of Appeal (hereafter in this Act referred to as the Tribunal) constituted in the prescribed manner, and the decision of the Tribunal on such appeal shall, subject to any Order which the Supreme Court may make on appeal made from such decision in accordance with the provisions of sub-section (2) of this section, be final.

(2) Where the Commissioner or any party to an appeal made to the Tribunal is dissatisfied with the decision of the Tribunal on such appeal, the Commissioner or that party may, by written petition in which every other party to the appeal is mentioned as a respondent, appeal to the Supreme Court from that decision on a question of law. The petition of appeal shall state the question of law to be argued, shall bear a certificate by an advocate or a proctor that such question is fit for adjudication by the Supreme Court, shall be presented to the Tribunal by the appellant within twenty-one days after the date of the Tribunal's decision from which the appeal is preferred, and shall be accompanied by a sufficient number of copies for service on each of the persons mentioned as respondents. Every such petition of appeal shall be accompanied by the prescribed fee.

(3) Where a petition of appeal is presented to the Tribunal in the manner and within the time specified in sub-section (2) of this section, it shall be the duty of the Tribunal—

(a) to cause the petition to be transmitted to the Supreme Court together with the record of the proceedings in which the decision of the Tribunal against which the petition is preferred was made, and

(b) to cause notice of the appeal and a copy of the petition of appeal to be served on each of the respondents named in the petition of appeal.

(4) Every appeal to the Supreme Court under this section may be heard and determined by any Judge of that Court.

(5) Upon a decision being given by the Supreme Court in any appeal under this section, the Registrar of that Court shall remit the case to the Tribunal together with the decision of that Court, and it shall be the duty of the Tribunal, if the decision of that Court, so requires, to rescind or vary, in such manner as is required by the decision of that Court, the decision of the Tribunal from which the appeal was preferred and, where necessary for the purpose of giving effect to the decision of that Court, to make a fresh decision.

(6) In any appeal made to the Supreme Court under this section that Court may make such order in regard to costs as to that Court may seem fit.

(7) Any costs ordered by the Supreme Court under sub-section (6) of this section to be paid by any person, may, notwithstanding anything contained in any other written law, be recovered on application made in that behalf to the Magistrate's Court having jurisdiction in the place where that person is resident, in like manner as a fine imposed by that Magistrate's Court notwithstanding that such costs may exceed the amount of the maximum fine which that Magistrate's Court may in the exercise of its ordinary jurisdiction impose.

(8) Subject to any regulations made under this Act, the Tribunal may regulate its own procedure.

Remuneration of members of the Tribunal. 30. The members of the Tribunal may be paid such remuneration as the Minister may determine with the concurrence of the Minister of Finance.

PART VI.

Powers of Commissioner to call for returns etc. 31. (1) The Commissioner may, for the purposes of this Act, direct in writing any person to furnish to him before a date specified in the direction—

(a) a return containing such particulars as he may require ;
and

(b) such explanation in writing as he may require in respect of any particulars specified in any return so furnished,
and such person shall comply with such direction. A direction under the preceding provisions of this sub-section may be given by notice published in the Gazette, and in two or more newspapers circulating in Ceylon.

(2) Any person furnishing any document under sub-section (1) of this section may transmit with such document a request in writing that the contents of such document should be treated as confidential and, where such request is made, the contents of such document shall not be disclosed without the consent previously obtained of such person.

(3) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose any explanation to produce any document in any case where such disclosure or production by that person is prohibited by or under the provisions of any written law other than this Act.

Power of Commissioner and other officers to inspect prescribe, etc. 32. Subject to such conditions and restrictions as may be prescribed the Commissioner or any officer authorised in that behalf by him in writing, for the purpose of carrying out the provisions of this Act,—

(a) enter and inspect at all reasonable hours by day or night any premises or place for examining any register or record relating to the earnings or any employee,

- (b) take copies of any such register or record or part thereof,
- (c) examine any person whom he has reasonable cause to believe is an employer or an employee, and
- (d) examine any records or other documents relating to any provident fund or pension scheme.

33. Every employer of employees in a covered employment shall keep in the prescribed form the prescribed records. Certain employees to keep records.

34. Any person who—

Offences.

(a) contravenes any provision of this Act or of any regulation made thereunder;

(b) furnishes, for the purposes of this Act, any information which is, or any document the contents of which are, or any part of the contents of which is, to his knowledge untrue or incorrect; or

(c) wilfully delays or obstructs the Commissioner or any other officer in the exercise of his powers under section 32, shall be guilty of an offence under this Act.

35. Where an act or omission which constitutes an offence for which an employer is liable under this Act has in fact been committed or made by some manager, agent, servant or other person, the manager, the agent, servant or other person, shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with the employer, or before or after the conviction of the employer, and shall be liable to the like punishment as if he were the employer. Liability of manager, agent etc., of employer for offences.

36. (1) Where any employer is charged with an offence under this Act, he shall, upon complaint duly made by him in accordance with the provisions of section 148 of the Criminal Procedure Code, and on giving to the prosecution not less than three days' notice of his intention, be entitled, subject to the provisions of Chapter XV of that Code, to have any other person whom he charges as the actual offender brought before the Court, and if, after commission of the offence by such other person has been proved the employer proves to the satisfaction of the Court that he has used due diligence to enforce the provisions of this Act and such other person has committed the offence without his knowledge consent or connivance, then such other person shall be convicted of the offence and the employer shall be exempt from any punishment in respect of the offence. Where the employer proves that some other person is guilty of an offence Cap. 16.

(2) Where in any case referred to in sub-section (1) of this section a complaint is made by an employer against any other person,—

(a) the prosecution against such other person shall be conducted by or on behalf of the employer,

(b) any witness called by the prosecution in the proceedings against such other person may be cross-examined by any officer authorised in that behalf by the Commissioner, and

(c) pending the determination of the proceedings against such other person, the proceedings in the prosecution of the employer shall be adjourned.

Punishment
for
offences.

37. (1) Every person who is guilty of an offence under this Act shall be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment, and shall in addition be liable to a fine not exceeding fifty rupees for each day on which the offence is continued after conviction.

(2) On the conviction of an employer for failure to pay any sum which he is liable to pay under this Act, the Court may, in addition to any other sentence order the employer to pay such sum, and such sum may be recovered in the same manner as a fine.

Recovery of
arrears of
payments
due in
certain
cases.

Cap. 13

38. Where an employer is convicted for failure to pay any sum which he is liable to pay under this Act then, if a notice in the prescribed form of the intention so to do has been served on the employer at any time before the date of the commencement of the trial evidence may be given of the failure on the part of the employer to pay any other sum which was due from him under this Act, within the two years immediately preceding the date on which complaint under section 148 of the Criminal Procedure Code was made to Court of the offence of which the employer is so convicted and, on proof of such failure, the Court may order the employer to pay such sum as may be found by the Court to be due from him. Any sum ordered to be paid under this section may be recovered in the same manner as a fine.

Burden of
Proof.

39. Where—

(a) an employer is prosecuted for the failure to pay any sum due from him under this Act, or

(b) in any case in which an employer is convicted for failure to pay any sum due from him under this Act, evidence is given, under Section 38, of any other failure to pay any sum due from him under this Act,

(c) the burden of proving that the sum was paid shall lie on the employer.

Offences
by bodies
of persons.

40. Where an offence under this Act is committed by a body of persons, then—

(a) if that body of persons is a body corporate, every director and officer of that body corporate,

(b) if that body of persons is a firm every partner of that firm, and

(c) if that body of persons is a Trade Union every officer of that trade union,

shall be deemed to be guilty of that offence :

Provided that a director or an officer of such body corporate, or a partner of such firm or an officer of such trade union shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

41. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Commissioner.

No prosecution
without
the sanction
of the
Commissioner .

42. (1) An extract from the Gazette containing any regulation or order made under this Act or a copy of such regulation or order purporting to have been certified by the Commissioner to be a true copy may be produced in Court in proof of such regulation or order.

(2) In any legal proceedings—

(a) a copy of an entry in any book of accounts maintained by the Monetary Board for the purposes of this Act, purporting to have been certified by an accountant of the Central Bank of Ceylon to be a true copy, or

Proof of
regulations
and orders,
etc.

(b) a copy of an entry in any book or record maintained by the Commissioner for the purposes of this Act, purporting to have been certified by him to be a true copy,

shall be *prima facie* evidence of the fact that such entry had been made and of the contents thereof.

43. (1) The income from the investment of any moneys of the Fund shall be exempt from income tax chargeable under the Income Tax Ordinance.

Exemption
from
income
tax.
Cap. 188.

(2) The sum paid as a benefit in respect of a member of the Fund under this Act shall be exempt from income tax chargeable under the Income Tax Ordinance, if the average yearly assessable income of such member during the five years immediately preceding his retirement, departure from Ceylon or death, as the case may be, does not exceed four thousand eight hundred rupees.

Cap. 188.

(3) The Fund shall be deemed to be a provident fund approved by the Commissioner for the purposes of the Income Tax Ordinance.

Cap. 188.

In this sub-section "Commissioner" shall have the same meaning as in the Income-Tax Ordinance.

**Exemption
from Stamp
duty.**

44. Stamp duty shall not be chargeable upon such documents used in connection with the purposes of this Act as may be prescribed.

**Protection
for action
taken under
this Act.**

45. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any regulations made thereunder.

Regulations.

46. (1) The Minister may make regulations—

(a) in respect of all matters which are stated or required by this Act to be prescribed ;

(b) in respect of all matters for which regulations are required or authorised to be made by this Act ;

(c) in respect of all matters connected with or incidental to the collection of contributions and other payments under this Act ;

(d) in respect of the refund of any sums paid in error to the Fund ;

(e) in respect of the evidence required in support of a declaration by a member of the Fund that he is leaving Ceylon and does not intend to return thereto ;

(f) for enabling a person to be appointed to exercise, on behalf of a claimant to be a benefit who is a child or who may be unable for the time being to act, any right which the claimant may be entitled to exercise under this Act, and for authorising a person so appointed to receive and deal with a benefit to which a claimant is entitled ;

(g) in respect of the nomination by a member of the fund of a person or persons to whom the amount standing to the credit of that member's individual account in the Fund may be paid in the event of that member's death and the manner of revocation of such nomination ;

(h) in respect of the manner in which and the time within which appeals to the Tribunal constituted under this Act shall be made ;

(i) in respect of the fees to be paid for appeals to such Tribunal ;

(j) in respect of the procedure to be followed and the powers exercisable by such Tribunal ;

(k) in respect of the circumstances in which costs may be awarded by such Tribunal against any party to an appeal made to the Tribunal and the manner of recovery of such costs ;

(l) to provide for matters arising—

(i) pending the determination under this Act (whether in the first instance or on appeal) of any claim to a benefit or of any question affecting any person's right to a benefit or any person's liability for contributions to the fund, or

(ii) out of the revision on appeal of any decision of any such claim or question ;

(m) for the suspension of the grant of a benefit pending the review by the Commissioner of the determination upon the claim to that benefit ;

(n) as to the date from which any decision on review or an appeal under this Act is to have effect or to be deemed to have effect ;

(o) for treating any sum paid to any person under a determination made under this Act or by virtue of any provision of any regulation, which it is subsequently decided was not payable, as properly paid, or for the repayment by him and for the recovery from him of that sum ;

(p) the payment of allowances to officers and servants employed in carrying out the provisions of this Act and the method of computing such allowances ; and

(q) in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principles thereof.

(2) No regulation made by the Minister shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the Gazette.

Every regulation so approved shall be as valid and effectual as though it were herein enacted.

47. In this act, unless the context otherwise requires,—

“ Commissioner ” means the Commissioner of Labour ;

Interpreta-
tion.

“ covered employment ” means an employment declared by regulation to be a covered employment ;

“ earnings ” mean—

(a) basic wages or salary,

(b) cost-of-living allowance, special living allowance and other similar allowances,

(c) payment in respect of holidays,

(d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such commodity used in the preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner whose decision on such appeal shall be final, and

(e) such other forms of remuneration as may be prescribed ;

“ employee ” includes any apprentice or learner who is paid a remuneration ;

“ employer ” means any person who on his own behalf employs, or any person on whose behalf any other person employs, or any person who on behalf of any other person employs, any person in a covered employment ;

“ Monetary Board ” means the Monetary Board established under the Monetary Law Act No. 58 of 1949.

“ prescribed ” means prescribed by regulation ; and

“ regulation ” means a regulation made under this Act.

Prohibition
or reduction
on certain
ground of
rate of
contribution
to a provident
fund or
contributory
pension
scheme.

48. The rate of the contributions of an employer or an employee to a provident fund or contributory pension scheme shall not be reduced by reason only of the fact that such rate is higher than the rate of contributions of an employer or employee to the fund.

Act to
prevail in
case of
conflict with
other written
law.

49. The provisions of this Act shall have effect notwithstanding anything contained in any other written law, and in any case of conflict or inconsistency between the provisions of this Act and such other law, the provisions of this Act shall prevail.